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AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1506

Collection of Claims

AGENCY: African Development Foundation.

ACTION: Final rule.

SUMMARY: This section establishes the policies and procedures to be followed by the African Development Foundation in the collection of debts due the United States. The regulations are based on the Federal Claims Collection Standards of the General Accounting Office and the Department of Justice found at 4 CFR Parts 101–105.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, Tom Wilson, Director, Administration and Finance, (202) 673–3916.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 46779–46781 of the **Federal Register** of December 10, 1987, and invited comments for 60 days ending February 8, 1988. No comments were received.

Regulatory Flexibility Act of 1980

Generally, these regulations do not contain substantive new material. It is, therefore, certified that they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Executive Order 12291

The African Development Foundation has determined that this rule is not a major rule for purposes of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the general public.

List of Subjects in 22 CFR Part 1506

Claims collection.

Accordingly, Part 1506 is added to 22 CFR Chapter XV to read as follows:

PART 1506—COLLECTION OF CLAIMS

Sec.
1506.1 Purpose.
1506.2 Applicability of Federal Claims Collection Standards.
1506.3 Subdivision of claims.
1506.4 Late payment, penalty and administrative charges.
1506.5 Demand for payment.
1506.6 Collection by offset.
1506.7 Disclosures to consumer reporting agencies and contracts with collection agencies.

Authority: 31 U.S.C. 3711, and 4 CFR Parts 101 through 105.

§ 1506.1 Purpose.

These regulations prescribe the procedures to be used by the African Development Foundation (ADF) in the collection of claims owed to the African Development Foundation and to the United States.

§ 1506.2 Applicability of Federal Claims Collection Standards.

Except as otherwise provided by law, the African Development Foundation will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the Federal Claim Collection Standards ("FCCS") of the General Accounting Office and Department of Justice, 4 CFR Parts 101–105.

§ 1506.3 Subdivision of claims.

A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

§ 1506.4 Late payment, penalty and administrative charges.

(a) Except as otherwise provided by statute, loan agreement or contract, the African Development Foundation will assess:

(1) *Late payment charges* (interest) on unpaid claims at the prompt payment interest rate established by the Secretary of the Treasury as the current value of funds to the United States Treasury.

(2) *Penalty charges* at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) *Administrative charges* to cover the costs of processing and calculating delinquent claims.

(b) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(c) *Waiver.* (1) Late payment charges are waived on any claim or any portion of a claim which is paid within 30 days after the date on which late payment charges begin to accrue.

(2) The 30 day period may be extended on a case-by-case basis if it is determined that an extension is appropriate.

(3) The African Development Foundation may waive late payment, penalty and administrative charges under the FCCS criteria for the compromise of claims (4 CFR Part 103), or upon a determination that collection of the charges would be against equity and good conscience or not in the best interest of the United States, including for example:

(i) Pending consideration of a request for reconsideration, administrative review or waiver under a permissive statute,

(ii) If repayment of the full amount of the debt is made after the date upon which interest and other charges become payable and the estimated costs of recovering the residual balance exceeds the amount owed, or

(iii) If collection of interest or other charges would jeopardize collection of the principal of the claim.

§ 1506.5 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis for the claim;

(2) The amount of the claim;

(3) The date when payment is due, 30 days, from date of mailing or hand delivery of the intial demand for payment;

(4) The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

§ 1506.6 Collection by offset.

(a) Collection by administrative offset will be undertaken only on claims which are liquidated or certain in amount. Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's financial condition and the impact of offset on Foundation activities.

(b) The procedures for offset in this part do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

(c) Before offset is made, the Foundation will provide the debtor with written notice informing the debtor of:

(1) The nature and amount of the claim;

(2) The intent of the Foundation to collect by administrative offset, including asking the assistance of the other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due data;

(3) The right of the debtor to inspect and copy the records of the Foundation related to the claim;

(4) The right of the debtor to a review of the claim within the Foundation. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request to the billing office for a review of the claim within the Foundation by the payment due date stated in the notice. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If the African Development Foundation later sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response, by administrative offset, unless payment is received within 30 days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraph (c) (3), (4) or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

(d) The African Development Foundation will promptly make requests for offset to other agences known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States." The African Development Foundation will provide instructions to the collecting agency for the transfer of funds.

(e) The African Development Foundation will promptly process requests for offset from other agencies and transfer funds to the requesting Foundation upon receipt of the written certification required by § 102.3 of the FCCS.

§ 1506.7 Disclosure to consumer reporting agencies and contracts with collection agencies.

(a) The African Development Foundation may disclose delinquent debts, other than delinquent debts of current Federal employees, to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and the FCCS.

(b) The African Development Foundation may enter into contracts with collection agencies in accordance with 31 U.S.C. 3718 and the FCCS.

December 2, 1987.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 88-4008 Filed 2-24-88; 8:45 am]

BILLING CODE 6117-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8176]

Income Tax; Treatment of Certain Charitable Contributions Relating to Bargain Sales

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the method by which certain charitable contributions are to be reduced in calculating the allowable deduction in the case of bargain sales. These amendments conform the regulations to case law and are necessary to provide guidance to taxpayers relating to charitable contributions in the case of bargain sales.

DATES: The regulations are effective with respect to contributions paid and sales and exchanges made after December 31, 1969.

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:

Background

In Estate of Bullard v. Commissioner, 87 T.C. 261 (July 31, 1986), the Tax Court invalidated §§ 1.170A-4 and 1.1011-2 of the Income Tax Regulations (26 CFR Part 1) to the extent they serve to disallow a charitable contribution deduction in the case of a bargain sale if the amount of the contribution was less than the section 170(e) reduction for the entire property (as opposed to just the contributed portion of the property). Section 170(e) provides, in part, that the amount of any charitable contribution otherwise taken into account under section 170 shall be reduced by the amount of gain that would have been recognized if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

Explanation of Provisions

The amendments to the regulations provide that a charitable contribution deduction will be disallowed in the case of a bargain sale if the amount of the contribution is less than the section 170(e) reduction for the contributed portion of the property. In addition, examples in the regulations have been amended to conform to these amendments. This document does not conform the regulations to statutory changes to the Code subsequent to the adoption of the regulations by T.D. 7207.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for final regulations subject to 5 U.S.C. 553(b)(B). Accordingly, the final 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 final 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 these final regulations is Joel S. Rutstein of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both in matters of substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.1001–1—1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority of Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.170A–4 is amended by revising paragraph (c) (2) and *Examples (5)* through *(8)* and *(10)* of paragraph (d) to read as set forth below:

§ 1.170A–4 Reduction in amount of charitable contributions of appreciated property.

* * * * *

(c) * * *

(2) *Bargain sale.* (i) Section 1011(b) and § 1.1011–2 apply to bargain sales of property to charitable organizations. For purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property in the case of a bargain sale, there shall be allocated under section 1011(b) to the contributed portion of the property that portion of the adjusted basis of the entire property that bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property. For purposes of applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property in such a case, there shall be allocated to the contributed portion the amount of gain that is not recognized on the bargain sale but that would have been recognized if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(ii) The term "bargain sale", as used in this subparagraph, means a transfer of property which is in part a sale or exchange of the property and in part a charitable contribution, as defined in section 170(c), of the property.

* * * * *

(d) * * *

Example (5). In 1970, F, an individual calendar-year taxpayer, sells to a church for $4,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. Thus, F makes a charitable contribution to the church of $6,000 ($10,000 − $4,000 amount realized), which is 60% of the value of the property. The amount realized on the bargain sale is 40% ($4,000/$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $1,600 ($4,000 adjusted basis × 40%) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and F recognizes $2,400 ($4,000 amount realized less $1,600 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, F's contribution of $6,000 is reduced by $3,600 ($6,000 − [$4,000 adjusted basis × 60%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $2,400 consists of the portion ($4,000 × 60%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $6,400 ($4,000 + $2,400).

Example (6). In 1970, G, an individual calendar-year taxpayer, sells to a church for $6,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. G's contribution base for 1970 is $20,000, and G makes no other charitable contributions in 1970. Thus, G makes a charitable contribution to the church of $4,000 ($10,000 − $6,000 amount realized), which is 40% of the value of the property. The amount realized on the bargain sale is 60% ($6,000/$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $2,400 ($4,000 adjusted basis × 60%) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and G recognizes $3,600 ($6,000 amount realized less $2,400 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, G's contribution of $4,000 is reduced by $2,400 ($4,000 − [$4,000 adjusted basis × 40%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $1,600 consist of the portion ($4,000 × 40%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $7,600 ($6,000 + $1,600).

Example (7). In 1970, H, an individual calendar-year taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. H's contribution base for 1970 is $20,000, and H makes no other charitable contributions in 1970. Thus, H makes a charitable contribution to the church of $8,000 ($10,000—$2,000 amount realized), which is 80% of the value of the property. The amount realized on the bargain sale is 20% ($2,000/$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $800 ($4,000 adjusted basis × 20%) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and H recognizes $1,200 ($2,000 amount realized less $800 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, H's contribution of $8,000 is reduced by $4,800 ($8,000 − [$4,000 adjusted basis × 80%]) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $3,200 consists of the portion ($4,000 × 80%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $5,200 ($2,000 + $3,200).

Example (8). In 1970, F, an individual calendar-year taxpayer, sells for $4,000 to a private foundation not described in section 170(b)(1)(E) property to which section 1245 applies which has a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. At the time of the bargain sale, F has used the property in his business for more than 6 months. Thus F makes a charitable contribution of $6,000 ($10,000 − $4,000 amount realized), which is 60% of the value of the property. The amount realized on the bargain sale is 40% ($4,000/$10,000) of the value of the property. If the property had been sold by F at its fair market value at the time of its contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000 − $4,000 adjusted basis) would have been treated as ordinary income and $2,000 would have been long-term capital gain. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $1,600 ($4,000 adjusted basis × 40%) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and F's recognized gain of $2,400 ($4,000 amount realized less $1,600 adjusted basis) consists of $1,600 ($4,000 × 40%) of ordinary income and $800 ($2,000 × 40%) of long-term capital gain. Under paragraphs (a) and (c)(2)(i) of this section, F's contribution of $6,000 is reduced by $3,000 (the sum of $2,400 ($4,000 × 60%) of ordinary income and $600 ([$2,000 × 60%] × 50%) of long-term capital gain) (*i.e.*, the amount of gain that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $3,000

consists of $2,400 ($4,000 X 60%) of adjusted basis and $600 ([$2,000 X 60%] X 50%) of long-term capital gain not used as a reduction under paragraph (a)(2) of this section. Under sections 1012 and 1015(a) the basis of the property to the private foundation is $6,400 ($4,000 + $2,400).

* * * * *

Example (10). (a) On July 1, 1970, B, a calendar-year individual taxpayer, sells to a church for $75,000 intangible property to which section 1245 applies which has a fair market value of $250,000 and an adjusted basis of $75,000. Thus, B makes a charitable contribution to the church of $175,000 ($250,000 − $75,000 amount realized), which is 70% ($175,000/$250,000) of the value of the property, the amount realized on the bargain sale is 30% ($75,000/$250,000) of the value of the property. At the time of the bargain sale, B has used the property in his business for more than 6 months. B's contribution base for 1970 is $500,000, and B makes no other charitable contributions in 1970. If the property had been sold by B at its fair market value at the time of its contribution, it is assumed that under section 1245 $105,000 of the gain of $175,000 ($250,000 − $75,000 adjusted basis) would have been treated as ordinary income and $70,000 would have been long-term capital gain. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of $22,500 ($75,000 adjusted basis × 30%) is allocated under § 1.1011–2(b) to the noncontributed portion of the property and B's recognized gain of $52,500 ($75,000 amount realized less $22,500 adjusted basis) consists of $31,500 ($105,000 × 30%) of ordinary income and $21,000 ($70,000 × 30%) of long term capital gain.

(b) Under paragraphs (a)(1) and (c)(2)(i) of this section B's contribution of $175,000 is reduced by $73,500 ($105,000 × 70%) (*i.e.*, the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of $101,500 consists of $52,500 [$75,000 × 70%] of adjusted basis allocated to the contributed portion of the property and $49,000 [$70,000 × 70%] of long-term capital gain allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $127,500 ($75,000 + $52,500).

* * * * *

Par. 3. Section 1.1011–2 is amended by revising paragraph (a), *Examples (3)* through *(7)* of paragraph (c), and subparagraphs (a) and (b) of *Example (8)* of paragraph (c) to read as set forth below:

§ 1.1011–2 Bargain sale to a charitable organization.

(a) *In general.* (1) If for the taxable year a charitable contributions deduction is allowable under section 170 by reason of a sale or exchange of property, the taxpayer's adjusted basis of such property for purposes of determining gain from such sale or exchange must be computed as provided in section 1011(b) and paragraph (b) of this section. If after applying the provisions of section 170 for the taxable year, including the percentage limitations of section 170(b), no deduction is allowable under that section by reason of the sale or exchange of the property, section 1011(b) does not apply and the adjusted basis of the property is not required to be apportioned pursuant to paragraph (b) of this section. In such case the entire adjusted basis of the property is to be taken into account in determining gain from the sale or exchange, as provided in § 1.1011–1(e). In ascertaining whether or not a charitable contributions deduction is allowable under section 170 for the taxable year for such purposes, that section is to be applied without regard to this section and the amount by which the contributed portion of the property must be reduced under section 170(e)(1) is the amount determined by taking into account the amount of gain which would have been ordinary income or long-term capital gain if the contributed portion of the property had been sold by the donor at its fair market value at the time of the sale or exchange.

* * * * *

(c) * * *

Example (3). In 1970, C, a calendar-year individual taxpayer, makes a charitable contribution of $50,000 cash to a church. In addition, he sells for $4,000 to a private foundation not described in section 170(b)(1)(E) stock held for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution of $6,000 of such property to the private foundation ($10,000 value − $4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(F), is $100,000, and during that year he makes no other charitable contributions. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is $50,000 for the amount of cash contributed to the church. Under section 170(e)(1)(B)(ii) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A–4, the $6,000 contribution of stock is reduced to $4,800 ($6,000 − [50% × ($6,000 value of contributed portion of stock—$3,600 adjusted basis)]). However, by reason of section 170(b)(1)(B)(ii), applied without regard to section 1011(b), no deduction is allowed under section 170 for 1970 or any other year for the reduced contribution of $4,800 to the private foundation. Accordingly, paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the stock sold to the private foundation, and under § 1.1011–1(e) the recognized gain on the bargain sale is $0 ($4,000 amount realized—$4,000 adjusted basis).

Example (4). In 1970, B, a calendar-year individual taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. B's contribution base for 1970, as defined in section 170(b)(1)(F), is $20,000 and during such year B makes no other charitable contributions. Thus, he makes a charitable contribution to the church of $8,000 ($10,000 value − $2,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $800 ($4,000 adjusted basis X $2,000 amount realized/$10,000 value of stock). Accordingly, B, has a recognized short-term capital gain of $1,200 ($2,000 amount realized—$800 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A–4, B is allowed a charitable contributions deduction for 1970 of $3,200 ($8,000 value of gift—[$8,000—($4,000 adjusted basis of property X $8,000 value of gift/$10,000 value of property)]).

Example (5). The facts are the same as in Example (4) except that B sells the property to the church for $4,000. Thus, B makes a charitable contribution to the church of $6,000 ($10,000 value − $4,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis × $4,000 amount realized/$10,000 value of stock). Accordingly, B has a recognized short-term capital gain of $2,400 ($4,000 amount realized − $1,600 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A–4, B is allowed a charitable contributions deduction for 1970 of $2,400 ($6,000 value of gift − [$6,000—($4,000 adjusted basis of property × $6,000 value of gifts/$10,000 value of property)]).

Example (6). The facts are the same as in Example (4) except that B sells the property to the church for $6,000. Thus, B makes a charitable contribution to the church of $4,000 ($10,000 value − $6,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $2,400 ($4,000 adjusted basis × $6,000 amount realized/$10,000 value of stock). Accordingly, B has a recognized short-term capital gain of $3,600 ($6,000 amount realized − $2,400 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A–4, B is allowed a charitable contributions deduction for 1970 of $1,600 ($4,000 value of gift—[$4,000 − ($4,000 adjusted basis of property × $4,000 value of gift/$10,000 value of property)]).

Example (7). In 1970, C, a calendar-year individual taxpayer, sells to a church for $4,000 tangible personal property used in his business for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution to the church of $6,000 ($10,000 value − $4,000 adjusted basis). C's contribution base for 1970, as defined in section 170(b)(1)(F) is $100,000 and during such year he makes no other charitable contributions. If C had sold the property at its fair market value at the time of its

contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000 value − $4,000 adjusted basis) would have been treated as ordinary icome. Thus, there would have been long-term capital gain of $2,000. It is also assumed that the church does not put the property to an unrelated use, as defined in paragraph (b)(3) of § 1.170A–4. Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis × $4,000 amount realized/$10,000 value of property). Accordingly, C has a recognized gain of $2,400 ($4,000 amount realized − $1,600 adjusted basis) on the bargain sale, consisting of ordinary income of $1,600 ($4,000 ordinary income × $4,000 amount realized/$10,000 value of property) and of long-term capital gain of $800 ($2,000 long-term gain × $4,000 amount realized/$10,000 value of property). After applying section 1011(b) and paragraphs (a) and (c)(2)(i) of § 1.170A–4, C is allowed a charitable contributions deduction for 1970 of $3,600 ($6,000 gift − [$4,000 ordinary income × $6,000 value of gift/$10,000 value of property]).

Example (8). (a) On January 1, 1970, A, a male of age 65, transfers capital assets consisting of securities held for more than 6 months to a church in exchange for a promise by the church to pay A a nonassignable annuity of $5,000 per year for life. The annuity is payable monthly with the first payment to be made on February 1, 1970. A's contribution base for 1970, as defined in section 170(b)(1)(F), is $200,000, and during that year he makes no other charitable contributions. On the date of transfer the securities have a fair market value of $100,000 and an adjusted basis to A of $20,000.

(b) The present value of the right of a male age 65 to receive a life annuity of $5,000 per annum, payable in equal installments at the end of each monthly period, is $59,755 ($5,000 × [11.469 + 0.482]), determined in accordance with section 101(b) of the Code, paragraph (e)(1)(iii)(b)(2) of § 1.101–2, and section 3 of Rev. Rul. 62–216, C.B. 1962–2, 30. Thus, A makes a charitable contribution to the church of $40,245 ($100,000 − $59,755).

* * * * *

This Treasury decision is not adverse to any taxpayer. For this reason, it is found unnecessary 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.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: February 9, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–4037 Filed 2–24–88; 8:45 am]

BILLING CODE 4830–01–M

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTIONS: Final rule.

SUMMARY: This rule amends the interpretation in § 550.406 of the Libyan Sanctions Regulations (the "Regulations"). The amended interpretation states that offshore transactions of U.S. persons are subject to the provisions of §§ 550.209 and 550.210 of the Regulations, which prohibit transactions in property in which the Government of Libya has an interest. This rule also corrects an inadvertent omission from the definition of the "Government of Libya" in § 550.304 of the Regulations.

EFFECTIVE DATE: February 25, 1988.

FOR FURTHER INFORMATION: Contact Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. Tel. (202) 376–0408.

SUPPLEMENTARY INFORMATION: The Libyan Sanctions Regulations, 31 CFR Part 550, were issued by the Treasury Department in implementation of Executive Order 12543 of January 7, 1986 (51 FR 875, January 9, 1986) and Executive Order 12544 of January 8, 1986 (51 FR 1235, January 10, 1986).

The amendment to § 550.304 of the Regulations ("Government of Libya") reinstates language published on January 10, 1986 (51 FR 1354), but inadvertently omitted in republishing. This language specifies that the Secretary of the Treasury may designate any other person or organization to be included within the definition of the Government of Libya and that a juridical person is not necessarily owned or controlled by the Libyan Government solely because it is located or organized in Libya.

Section 550.406 ("Offshore Transactions") was originally formulated to implement a territorial trade ban imposed on January 7, 1986. This amendment conforms the interpretation in § 550.406 to the assets freeze imposed on January 8, 1986, and sets forth the standing interpretation of the Office of Foreign Assets Control that the prohibition on dealings in property in which the Government of Libya has any interest applies to U.S. persons' transactions worldwide. An example provided in the amended rule states that U.S. persons are prohibited from purchasing, selling, financing, insuring, transporting, acting as a broker for the sale or transport of, or otherwise dealing in, Libyan crude oil or petroleum products refined in Libya. The same prohibition also applies to ship brokerage for the movement of Libyan cargo.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 550

Libya, Blocking of assets, Imports, Exports, Loans.

31 CFR Chapter V, Part 550, is amended as set forth below:

PART 500—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for Part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.;* E.O. 12543, 51 FR 875, January 9, 1986; E.O. 12544, 51 FR 1235, January 10, 1986; as affected by notice of December 23, 1986, 51 FR 46849, December 29, 1986.

Subpart C—General Definitions

2. Section 550.304 is amended by changing "effective data" to "effective date" in paragraph (a)(3); by placing a comma after "effective date" near the end of the sentence in paragraph (a)(3), changing the period to a semicolon at the end of paragraph (a)(3); and by adding paragraphs (a)(4) and (b) at the end thereof:

§ 550.304 Government of Libya.

(a) * * *

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Government of Libya solely by reason of being located in, organized under the laws of, or having its principal place of business in, Libya.

* * * * *

Subpart D—Interpretations

3. Section 550.406 is revised to read as follows:

§ 550.406 Offshore transactions.

(a) The provisions contained in §§ 550.209 and 550.210 apply to transactions by U.S. persons in locations outside the United States with respect to property in which the U.S. person knows, or has reason to know, that the Government of Libya has or has had any interest since 4:10 p.m. EST, January 8, 1986, including:

(1) Importation into such locations of, or

(2) Dealings within such locations in, goods or services of Libyan origin.

(b) Example. A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in, Libyan crude oil or petroleum products refined in Libya.

(c) Note. Exports or reexports of goods and technical data, or of the direct products of technical data (regardless of U.S. content), not prohibited by this part may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401 *et seq.*, and the Export Administration Regulations implementing that Act, 15 CFR Parts 368–399.

Dated: January 28, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 19, 1988.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 88–4110 Filed 2–23–88; 12:11 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD8 88–02]

Change to Morgan City and New Orleans Marine Inspection Zone and Captain of the Port Zone Boundary Line

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule provides a more precise description of a segment of the boundary line between the Morgan City and New Orleans Coast Guard Marine Inspection and Captain of the Port Zones in the vicinity of Lafourche Parish. The boundary line was first published in **Federal Register**, Vol. 52, No. 185, pg 35913. These organizational changes will not affect any Coast Guard services to the public.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Commander J. Kuchin, USCG, c/o Commander, Eighth Coast Guard District (m), 500 Camp Street, New Orleans, LA 70130–3396; (504) 589–6271.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. The amendments are matters relating to agency organization and are exempt from the notice and comment requirements of 5 U.S.C. 553(b). Since this rule reflects current organizational changes being placed in effect and has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C. 553(d). The rulemaking merely clarifies the boundary line between the Morgan City and New Orleans Marine Inspection and Captain of the Port Zones. There will be no effect on the public, since Marine Safety Offices Morgan City and New Orleans will continue to perform all functions affecting the public that were previously performed.

Drafting Information

Commander J. Kuchin, Eighth Coast Guard District Marine Safety Division, Project Manager; and Lieutenant Commander J. J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion

Effective 1 October 1987, the Captain of the Port Office New Orleans and Marine Inspection Office New Orleans merged resources to establish Marine Safety Office New Orleans and Marine Safety Office Morgan City. The establishment of the boundary lines was contained in **Federal Register**, Vol. 52, No. 185, pg. 35913. The segment of the boundary line between 28°50′ N., 89°21′06″ W. and the Lafourche Parish line is not accurately described. This change corrects that by identifying coordinates in latitute and longitude. It will not affect any Coast Guard service to the public.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided for in section 1(a)(3) of the Order. It is considered to be nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This final rule places no requirements on any sector of the public. It will not affect Coast Guard services delivered to the public. The rule reflects a change in internal Coast Guard organization. Since the impact of the final rule is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 3

Coast guard areas, Districts, Marine inspection zones, Captain of the port zones.

Final Regulations

In consideration of the foregoing, Part 3 of Title 33 of the Code of Federal Regulations, is amended as set forth below.

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

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.40–15, paragraph (b) is revised to read as follows:

§ 3.40–15 New Orleans Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the New Orleans Marine Inspection Zone and Captain of the Port Zone starts at 28°50′ N. latitude 88° W. longitude; northerly to 29°10′ N. latitude; thence northeasterly to the Mississippi coast at 89°10′ W.; thence north to the northern Harrison County boundary; thence westerly along the northern Harrison County boundary; thence northerly along the western county boundaries of Stone, Forrest, Jones, Jasper, Newton, Neshoba, Winston, Choctaw, and Webster counties to the 8th district line thence west to the Texas-Louisiana border; thence south along the Texas-Louisiana border to the northern DeSoto Parish boundary; thence easterly along the northern and eastern parish boundaries of DeSoto, Sabine, Vernon, Allen parishes thence east along the northern parish boundaries of Acadia, Lafayette, St. Martin, Iberia, Assumption and Lafourche parishes to 29°18′ N., 90°00′ W.; thence southeast to 28°50′ N., 89°27′ 06″ W., thence east to 88° W. longitude.

3. Section 3.40–17 paragraph (b) is revised to read as follows:

§ 3.40–17 Morgan City Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Morgan City Marine Inspection Zone and the Captain of the Port Zone starts at 28°50′ N. latitude, 88° W. longitude; thence due west to 28°50′ N. latitude, 89°27′ 06″ W.

longitude; thence northwesterly to 29°18' N. latitude, 90°00' W. longitude; thence northwesterly along the northern boundaries of Lafourche, Assumption, Iberia, and St. Martin parishes; thence westerly along the westerly boundary of Lafayette Parish; thence northwesterly along the northern boundary of Acadia Parish; to an intersection with 92°23' W. longitude; thence south along 92°23' W. longitude to the sea.

Dated: February 9, 1988.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 88-4046 Filed 2-24-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW FRL-3333-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Correction and Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to and clarification of final rule.

SUMMARY: EPA is correcting and clarifying a final rule denying delisting petitions from five petitioners which appeared in the **Federal Register** on November 14, 1986 (51 FR 41320). An inadvertent omission occurred in the Agency's discussion of Monroe Auto Equipment Company's delisting petition; today's clarification applies only to Monroe Auto Equipment Company.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9436, or at (202) 382-3000. For technical information, contact Scott Maid, Office of Solid Waste (WH-563), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION: EPA is clarifying two paragraphs included in a final rule on November 14, 1986, which denied five petitions to exclude (or "delist") specific wastes from the lists of hazardous wastes published in 40 CFR 261.31 and 261.32, pursuant to 40 CFR 260.20 and 260.22. Today's clarification applies only to Monroe Auto Equipment Company (Monroe). In the November 1986 rule the Agency inadvertently omitted reference to Monroe's off-site landfill known as the Sandhills landfill located in Cozad, Nebraska, which contains wastes that Monroe had petitioned to delist. The notice should have stated that the Agency was denying a final exclusion to Monroe not only for the wastewater treatment sludge generated and contained at Monroe's on-site surface impoundments in Cozad, but also for its off-site Sandhills landfill. As a result of this clarification, the paragraph now correctly identifies the Sandhills landfill site as subject to the final delisting denial decision. This notice also clarifies the discussion presented in the November 14, 1986, final rule regarding application of the six-month effective date to the Sandhills site.

I. Background

Monroe first petitioned to delist its wastewater treatment sludge, as contained in its two on-site surface impoundments, on September 30, 1981. Based on the demonstrated immobility (*i.e.*, low EP leachate concentrations of the constituents of concern) of the listed hazardous constituents in the surface impoundment sludges, the Agency granted Monroe a temporary exclusion on December 27, 1982. Although the temporary exclusion was never published in the **Federal Register**, the effective date of the "informal" (unpublished) exclusion was December 27, 1982—the date on which the informal exclusion was signed by the Director of the Office of Management, Information, and Analysis.

During 1984, the Nebraska Department of Natural Resources detected significant concentrations of trichloroethylene and 1,1,1-trichloroethane in the ground water at Monroe's Cozad facility. Monroe, in an effort to determine the source of these organics, analyzed sludge samples collected from both of the on-site impoundments and discovered that the impoundment sludge also contained significant concentrations of the same organic compounds. Starting in July, 1985, Monroe attempted to reduce the concentrations of the volatile organics present in the impoundment sludges through hydration and aeration.

From 1977 through 1982, wastewater treatment sludges were removed from the Cozad surface impoundments and disposed of at the Sandhills site. In August of 1985, Monroe, for the first time, documented and characterized the Sandhills disposal site. On September 16, 1985, Monroe altered its wastewater treatment system, discontinuing the use of the on-site surface impoundments and adding a vacuum filtration unit to its treatment facility to de-water and to air strip volatile organics from the wastewater treatment sludge.

On October 18, 1985, Monroe amended its September 30, 1981, petition, requesting exclusion not only of the on-site surface impoundment wastewater treatment sludges, but also of the continuously generated vacuum filter cake, and of the Sandhills disposal site sludge:

> Monroe hereby amends its petition to cover three different sludges: (1) treated lagoon sludge, (2) vacuum filter cake, (3) Sandhills disposal site sludge.

II. Correction and Clarification

In the November 14, 1986, final rule, EPA inadvertently failed to identify the Sandhills disposal site sludge as part of Monroe's petition and as subject to the final decision denying exclusion. The Agency grants exclusions only for wastes described in petitions at the time the Agency makes its decisions. Further, such descriptions must include sampling and characterization data for those wastes for which an exclusion in sought.

Because Monroe amended its petition in October of 1985, and included the required sampling and characterization data for the Sandhills site, the Sandhills site was properly characterized and included in the Agency's evaluation of Monroe's petition. In fact, the Agency did consider and did deny a final exclusion for the Sandhill site in the final rule. However, the Agency inadvertantly omitted specific reference to the Sandhills site in its final decision. This correction restores to the "Final Agency Decision" paragraph the inadvertantly omitted reference to the Sandhills site and to the vacuum filter cake.

Although the Sandhills site was before the Agency for delisting consideration in 1985, it was not before the Agency in 1982, when the Agency granted Monroe a temporary exclusion. The 1981 petition upon which the Agency granted a temporary exclusion never included any mention of, or analytical data characterizing, the Sandhills, disposal site. Monroe only documented and characterized that site in August of 1985, nearly three years after the Agency had granted Monroe's temporary exclusion. Monroe only amended its petition to include the Sandhills site and the vacuum filter cake after alteration of the wastewater treatment system, which occurred after documentation of the Sandhills site. Thus, the temporary exclusion did not apply to either the Sandhills site or the vacuum filter cake.

Because the Sandhills site was not subject to Monroe's temporary exclusion, and because that site had been receiving listed (F006) hazardous

waste since 1980, Monroe was under a duty to treat that waste as hazardous and to subject the Sandhills site to Subtitle C controls since 1980. Because Monroe was required to treat its Sanndhills' wastes as hazardous prior to the effective date of the final decision, and because the final decision denied the petition to exclude the Sandhills' waste from the lists of hazardous wastes, the Sandhills site was, is, and will continue to be subject to Subtitle C controls. EPA is therefore clarifying that the six-month effective date will have no effect on Monroe's preexisting and continuing Subtitle C obligations at the Sandhills site.

Date: February 18, 1988.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following correction is made to SW-FRL-3110-4, the Hazardous Waste Management System: Identification and Listing of Hazardous Waste final rule published in the **Federal Register** on November 14, 1986 (51 *FR* 41320). The paragraph entitled "Final Agency Decision" should be corrected to read:

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by Monroe is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Monroe Auto Equipment Company for its wastewater treatment sludge [and for its vacuum filter cake] as generated, and as contained in its on-site surface impoundments [and off-site Sandhills landfill disposal site] resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Cozad, Nebraska. By this action, the Agency also withdraws the temporary exclusion granted in December 1982, for the waste in the on-site surface impoundments.

[FR Doc. 88-4029 Filed 2-24-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 355

[FRL-3333-6]

Extremely Hazardous Substances List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 17, 1986, the U.S. Environmental Protection Agency (EPA) proposed the deletion of 40 substances from the list of "extremely hazardous substances" promulgated by the Agency under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act of 1986. Today EPA is taking final action to remove 36 of these substances from the list of extremely hazardous substances.

EFFECTIVE DATE: This rule becomes effective on February 25, 1988.

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. EPA, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is 202-382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Bishop, Preparendness Staff, WH-562A, or Carrie Wehling, Office of General Counsel, LE-132S, U.S. EPA, 401 M Street SW., Washington, DC 20460. The Chemical Emergency Preparedness Hotline can also be contacted for further information at 1-800-535-0202, in Washington, DC at 1-202-479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Statutory Authority

This regulation is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 ("the Act").

II. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (1986). Title III of SARA established a program designed to encourage state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050.

Subtitle A of the Act establishes the framework for local emergency planning. Under section 302, a facility which has present an "extremely hazardous substance" is excess of its threshold planning quantity ("TPQ") must notify its State emergency planning commission and participate, as necessary, in local emergency planning activities.

Section 302 directed EPA to publish the list of extremely hazardous substances as an interim final rule within 30 days of the enactment of SARA. Section 302(a)(2) required that this list be identical to the list compiled by EPA in 1985 as part of the Agency's Chemical Emergency Preparedness Program. Under section 302(a)(4), EPA is authorized to revise the list, but in undertaking any such revision, the Agency must take into account the "toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance". The term "toxicity" is defined to include "any short- or long-term health effect which may result from a short-term exposure to the substance".

EPA published the list of 402 extremely hazardous substances and threshold planning quantities on November 17, 1986. 51 F.R. 41570. On the same day, EPA proposed the deletion of 40 substances from the list of extremely hazardous substances based on the fact that they did not meet the Agency's criteria for acute toxicity. 51 F.R. 41593.

On April 22, 1987, EPA published a revision of the interim final rule. 52 FR 13378. In the preamble to that rule, EPA announced that it was deferring the proposed delisting of these substances, pending an evaluation of the long-term effects from short-term exposure to each of the substances proposed for delisting. 52 F.R. 13388. This deferral was in response to comments from members of the public who argued that the proposed deletion would be premature and inconsistent with the statutory requirements for revision to the list which require consideration of both short-term and long-term health effects from short-term exposure prior to deletion.

III. Today's Rulemaking

Today EPA is taking final action to remove 36 of the 40 substances proposed for delisting on November 17, 1986 from the list of extremely hazardous substances under section 302 of the Act. Although EPA has not considered the long-term toxicity of these substances, EPA believes that today's rule is necessary in light of the recent opinion of the District Court for the District of Columbia in several cases challenging EPA's deferral of the delisting.

On November 23, 1987, the District Court in *A.L. Laboratories, Inc.* v. *Environmental Protection Agency*, Civil

Action No. 87-1991-OG (and consolidated cases) issued an order requiring EPA to remove four of the substances proposed for delisting from the list of extremely hazardous substances under section 302 of the Act. The basis for the Court's order was its reasoning that Congress did not intend to include in the statutorily-designated list substances listed due to "clerical error".

In response to the Court's order, EPA has published final rules removing those four substances from the section 302 list. 52 FR 48072, 48073 (December 17, 1987). These substances are bacitracin, dibutyl phthalate, dimethyl phthalate, and dioctyl phthalate. Although the Court's order does not expressly address the remaining 36 substances proposed for deletion, EPA believes that the Court's reasoning extends to these substances as well. EPA's November 17, 1986 proposed delisting of all 40 substances was based on the Agency's explicit recognition that these substances did not meet the criteria established by the Agency for qualification for the list referred to by Congress in section 302(a)(2). The Court concluded that such substances were thus listed under section 302 in error and that the criteria for revisions for the list under section 302(a)(4) were inapplicable to such substances. Thus, contrary to the arguments presented by the commenters on the Novemer 17, 1986 proposed delisting, under the Court's reasoning, EPA is not required, and in fact is not authorized, to consider long-term toxicity prior to removing any of these 40 substances from the list.

Accordingly, upon the effective date of today's rule, the remaining 36 substances proposed for delisting on Novemer 17, 1986, will no longer be subject to the emergency planning and notification requirements under the Act. EPA is currently developing the criteria for evaluating the additional physical and health characteristics specified under section 302(a)(4) for future revisions of the extremely hazardous substances list. If any of these substances meet these criteria in the future, EPA will consider such substances for relisting at that time. Because any such future revisions will be based upon the Agency's findings concerning the toxicity or other health or physical hazards of such substances, the criteria specified in section 302(a)(4) will be fully applicable to such revisions.

With today's delisting, there are 366 substances remaining on the list of "extremely hazardous substances" under section 302 of the Act.

IV. Regulatory Analyses

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency reponse plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: February 18, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Part 35 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for Part 355 continues to read as follows:

Authority: Secs. 302, 303, 304, 325, 326, 328, and 329 Pub. L. 99-499, 100 Stat. 1613, 42 U.S.C. 11002, 11003, 11004, 11025, 11026, 11028, and 11029 (1986).

PART 355—[AMENDED]

2. Appendix A to Part 355 is amended by removing the following entries:

Appendix A–The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[Alphabetical order]

CAS No.	Chemical name
16919-58-7	Ammonium chloroplatinate.
98-09-9	Benzenesulfonyl chloride.
106-99-0	Butadiene.
109-19-3	Butyl isovalerate.
111-34-2	Butyl vinyl ether.
2244-16-8	Carvone.
107-20-0	Chloroacetaldehyde.
7440-48-4	Cobalt.
117-52-2	Coumafuryl.
287-92-3	Cyclopentane.
633-03-4	C.I. basic green 1.
8023-53-8	Dichlorobenzalkonium chloride.
93-05-0	Diethyl-p-phenylenediamine.
646-06-0	Dioxolane.
2235-25-8	Ethylmercuric phosphate.
1335-87-1	Hexachloronaphthalene.
53-86-1	Indomethacin.
10025-97-5	iridium tetrachloride.
108-67-8	Mesitylene.
7440-02-2	Nickel.
65-86-1	Orotic acid.
20816-12-0	Osmium tetroxide.
76-01-7	Pentachloroethane.
87-86-5	Pentachlorophenol.
84-80-0	Phylloquinone.
10025-65-7	Platinous chloride.
13454-96-1	Platinum tetrachloride.
1331-17-5	Propylene glycol, allyl ether.
95-63-6	Pseudocumene.
10049-07-7	Rhodium trichloride
128-56-3	Sodium antraquinone-1-sulfonate.
1314-32-5	Thallic oxide.
21564-17-0	Thiocyanic acid, 2-(benzothiazolylthio)methyl ester.
640-15-3	Thiometon.
52-68-6	Trichlorphon.
3048-64-4	Vinylnorbornene.

3. Appendix B to Part 355 is amended by removing the following entries:

Appendix B—the List of Extremely Hazardous Substances and Their Threshold Planning Quantities.

[CAS Number Order]

CAS No.	Chemical name
52-68-6	Trichlorphon.
53-86-1	Indomethacin.

CAS No.	Chemical name
65-86-1	Orotic Acid.
76-01-7	Pentachloroethane.
84-80-0	Phylloquinone.
87-86-5	Pentachlorophenol.
93-05-0	Diethy-p-phenylenediamine.
95-63-6	Pseudocumene.
98-09-9	Benzenesulfonyl chloride.
106-99-0	Butadiene.
107-20-0	Chloroacetaldehyde.
108-67-8	Mesitylene.
109-19-3	Butyl isovalerate.
111-34-2	Butyl vinyl ether.
117-52-2	Coumafuryl.
128-56-3	Sodium anthraquinone-1-sulfonate.
287-92-3	Cyclopentane.
633-03-4	C.I. basic green 1.
640-15-3	Thiometon.
646-06-0	Dioxolane.
1314-32-5	Thallic oxide.
1331-17-5	Propylene glycol, allyl ether.
1335-87-1	Hexachloronaphthalene.
2235-25-8	Ethylmercuric phosphate.
2244-16-8	Carvone.
3048-64-4	Vinylnorbornene.
7440-02-2	Nickel.
7440-48-4	Cobalt.
8023-53-8	Dichlorobenzalkonium chloride.
10025-65-7	Platinous chloride.
10025-97-5	iridium tetrachloride.
10049-07-7	Rhodium trichloride.
13454-96-1	Platinum tetrachloride.
16919-58-7	Ammonium chloroplatinate.
20816-12-0	Osmium tetroxide.
21564-17-0	Thiocyanic acid, 2-(benzothiazolylthio)methyl ester

[FR Doc. 88-4030 Filed 2-24-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable to Pay

Correction

In the rule document 87-27316 beginning on page 46022 in the issue of Thursday, December 3, 1987, make the following correction:

§ 124.511 [Corrected]

On page 46036, in the third column, ninth line from the bottom of the page, in § 124.511(b)(1)(iii)(B), the word "compliance" should be "noncompliance".

Dated: February 18, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88-4047 Filed 2-24-88; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-416; RM-5112]

Radio Broadcasting Services; Keokuk, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of W. Russell Withers, Jr., substitutes Channel 290C2 for Channel 237A at Keokuk, Iowa, and modifies its license for Station KOKX(FM) to specify the higher powered channel. Additionally, in order to accommodate the competing expression of interest filed by Patrick Michael Sullivan, the Commission is allocating Channel 242C2 to Keokuk. As stated in the *Notice*, Withers' proposal was not considered to be an adjacent channel upgrade and thus was not governed by § 1.420(g) of the Commission's Rules. Channels 237A and 290C2 are 53 channels removed. In accordance with § 73.207 of the Commission's Rules, Class A and C2 allotments which are 53 channels apart require a separation of 16 kilometers to avoid causing IF interference. However, Channel 290C2 can be allocated to Keokuk without requiring the deletion of Channel 237A if the higher powered channel is restricted to an area at least 16.7 kilometers (10.4 miles) southwest. Therefore, the expression of interest filed by Patrick Michael Sullivan for Channel 290C2 at Keokuk has been accepted. However, since no interest in use of Channel 237A has been expressed, we shall not retain the channel at Keokuk. Therefore, Channel 290C2 can be allocated to Keokuk with a lesser site restriction of 9.6 kilometers (6.0 miles) west to avoid a short-spacing to Station WWCT, Channel 289B, Peoria, Illinois. Channel 242C2 can be allocated to Keokuk with a site restriction of 6.0 kilometers (3.7 miles) northwest to avoid a short-spacing to Station KRJY, Channel 242C1, St. Louis, Missouri. With this action, this proceeding is terminated.

DATES: Effective April 4, 1988. The window period for filing applications for Channel 242C2 will open on April 5, 1988, and close on May 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-416, adopted January 14, 1988, and released February 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Iowa is amended by amending the entry for Keokuk to add Channels 242C2 and 290C2 and delete Channel 237A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-3974 Filed 2-24-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-262; RM-5295; RM-5344]

Radio Broadcasting Services; Cape Vincent, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Mars Hill Broadcasting Company, Inc., allocates Channel 234A to Cape Vincent, New York, as the community's second local FM service. Channel 234A can be allocated to Cape Vincent in compliance with the Commission's minimum distance separation requirements, without a site restriction. However, the station must use a directional antenna limiting the radiation towards Station CBBB-FM, Belleville, Ontario, to 0.75 kW ERP with a height above average terrain of 100 meters, or the equivalent, on the radial towards Belleville. Canadian concurrence in the allotment of Channel 234A at Cape Vincent, as a specially negotiated short-spaced allotment has been received. With this action, this proceeding is terminated.

DATES: Effective April 4, 1988. The window period for filing applications will open on April 5, 1988, and close on March 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 86–262, adopted January 14, 1988, and released February 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York is revised by adding to the entry for Cape Vincent, Channel 234A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–3972 Filed 2–24–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–297; RM–5868]

Radio Broadcasting Services; Franklin, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Northwestern Pennsylvania Broadcasting Co., Inc., substitutes Channel 257B1 for Channel 257A at Franklin, Pennsylvania, and modifies its license for Station WVEN(FM) to specify operation on the higher powered channel. Channel 257B1 can be allocated to Franklin in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.5 kilometers (4.7 miles) west. Canadian concurrence in the allotment has been received. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 4, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–297, adopted January 26, 1988, and released February 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Franklin, Pennsylvania, is amended by deleting Channel 257A and adding Channel 257B1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–3973 Filed 2–24–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–206, Rm–5086]

Radio Broadcasting Services; Canton, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 289C2 for Channel 288A at Canton, Georgia, and modifies the Class A license of Station WCHK(FM), accordingly in response to a petition filed by Cherokee Broadcasting. The Canton allotment will provide a second aural service to approximately 17,167 persons in a 253 square mile area. Canton was preferred over the proposal to allot Channel 289A in Douglasville, Georgia, because the provision of second aural service is of a higher priority than a second local service since Douglasville already has a daytime AM station. Canton was also favored over the proposal to allot Channel 289A at Villa Rica, Georgia, due to the greater number of people that will receive a second aural service versus a first local service. The proposal to substitute Channel 289A for Channel 244A at Newnan was also denied because it would create a new short spacing to an existing facility. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–206, adopted January 25, 1988, and released February 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Georgia by revising Channel 289C2 for Channel 288A at Canton.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–3975 Filed 2–24–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–307; RM–5909]

Radio Broadcasting Services; Wadesboro, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Justine Hope Lambert, allocates Channel 228A to Wadesboro, North Carolina, as the community's first local FM service. Channel 228A can be allocated to Wadesboro in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest to avoid a short-spacing to Station WZNS, Channel 225C, Dillon, South Carolina. With this action, this proceeding is terminated.

DATES: Effective April 4, 1988. The window period for filing applications will open on April 5, 1988, and close on May 5, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–307, adopted January 26, 1988, and released February 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina is amended by adding Wadesboro, Channel 228A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–3976 Filed 2–24–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–321; RM–5781]

Radio Broadcasting Services; Ashland, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rogue Radio Corporation, herein substitutes Channel 270C for Channel 270C1 at Ashland, Oregon, and modifies its license for Station KCMX–FM, to specify the higher powered channel. Channel 270C can be allocated to Ashland in compliance with the Commission's minimum distance separation requirements and can be used at Station KCMX–FM's present transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 4, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–321, adopted January 22, 1988, and released February 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Ashland, Oregon, is amended by adding Channel 270C and deleting Channel 270C1.

Federal Communications Commission.

Mark N. Lipp

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–3977 Filed 2–24–88; 8:45 am]

BILLING CODE 6712–01–M

AFRICAN DEVELOPMENT FOUNDATION

48 CFR Part 5706

Acquisition Regulations Concerning Competition Requirements

AGENCY: African Development Foundation.

ACTION: Final rule.

SUMMARY: This action establishes the circumstances and procedures under which certain procurements of the African Development Foundation for services to be provided abroad need not be subject to the FAR requirement of full and open competition.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, Tom Wilson, Director, Administration and Finance, (202) 673–3916.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 47033–47034 of the **Federal Register** of December 11, 1987, and invited comments for 60 days ending February 9, 1988. No comments were received.

Regulatory Flexibility Act of 1980

Generally, these regulations do not contain substantive new material. It is, therefore, certified that they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Executive Order 12291

The African Development Foundation has determined that this rule is not a major rule for purposes of E.O. 12291 because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes obligatory information requirements on the general public.

List of Subjects in 48 CFR Part 5706

Government contracts, Government procurement.

Accordingly, Title 48 of the Code of Federal Regulations is amended by establishing Chapter 57 and adding Part 5706 to read as follows:

CHAPTER 57—AFRICAN DEVELOPMENT FOUNDATION

SUBCHAPTER B—ACQUISITION PLANNING

PART 5706—COMPETITION REQUIREMENTS

Authority: 40 U.S.C. 474.

Subpart 5706.3—Other Than Full and Open Competition

5706.302–70 Impairment of foreign aid programs.

(a) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief and rehabilitation.

(b) *Application.* This authority may be used for:

(1) An award under section 506(a)(5) of the African Development Foundation

Act involving a personal service contractor serving abroad;

(2) An award of $100,000 or less for audit, evaluation or program support services to be provided abroad;

(3) An award for which the President of the Foundation makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the Foundation program.

(c) *Limitation.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) The contract file must include an appropriate explanation and support justifying award without full and open competition, as provided in FAR 6.303, except that determinations made under paragraph (b)(3) of this section will not be subject to the requirement for contracting officer certification or to approvals in accord with FAR 6.304.

ADF Agency Number 1101006

ADF BOAC Number 953901

February 18, 1988.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 88-4007 Filed 2-24-88; 8:45 am]

BILLING CODE 6117-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 54]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection and Seat Belt Assemblies

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

ACTION: Denial of petitions for reconsideration; denial of petition for rulemaking.

SUMMARY: This notice denies four petitions requesting the agency to apply certain of the test requirements of Safety Standard No. 209, *Seat Belt Assemblies*, to dynamically tested manual lap-shoulder belts, and to rescind the current Standard No. 208 exemption for automatic safety belts.

The American Seat Belt Council, the Narrow Fabrics Institute, Inc., and Phoenix Trimming Company, submitted petitions for reconsideration of the agency's decision to exempt dynamically tested manual lap-shoulder belts from the assembly, webbing, breaking strength and elongation requirements of Standard No. 209. The ASBC also submitted a petition for rulemaking asking NHTSA to delete the provision in Standard No. 208 which exempts automatic safety belts from the Standard No. 209 webbing requirements.

The agency concludes there is insufficient justification for making the requested changes regarding dynamically tested automatic and manual safety belts. Accordingly, NHTSA denies these petitions.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4916.

SUPPLEMENTARY INFORMATION: This notice responds to four petitions requesting the agency to apply certain of the test requirements of Safety Standard No. 209, *Seat Belt Assemblies*, to dynamically tested manual lap-shoulder belts, and to delete the current Standard No. 208 exemption for automatic safety belts. The American Seat Belt Council (ASBC), together with the Narrow Fabrics Institute, Inc. (NFI) and Phoenix Trimming Company, submitted petitions for reconsideration of the agency's decision to exempt dynamically tested manual lap-shoulder belts from the webbing width, breaking strength and elongation requirements of Safety Standard No. 209, *Seat Belt Assemblies*. The ASBC also submitted a petition for rulemaking asking NHTSA to delete the provision in Standard No. 208 which exempts automatic safety belts from the Standard No. 209 webbing requirements. In a September 5, 1986 notice responding to petitions for reconsideration of several amendments to Standard No. 208 that appeared in a March 21, 1986 notice, NHTSA stated that the agency would respond to these four petitions at a later date (51 FR 31765). Today's notice provides the agency's response to those petitions.

Background

On April 12, 1985 (50 FR 14589), NHTSA published a notice proposing to amend several requirements of Safety Standard No. 208. The proposal pertained to a number of issues identified as likely subjects of future rulemaking by former Secretary of Transportation Elizabeth Dole in her July 17, 1984 final rule requiring a phased-in schedule for automatic occupant protection in all passenger cars unless a contingency for rescission of that requirements is met. The requirement for automatic restraints will be rescinded if mandatory safety belt use laws meeting specified criteria are passed by a sufficient number of States before April 1, 1989, to cover two-thirds of the population of the United States effective not later than September 1, 1989.

One of the issues addressed in the April 1985 notice of proposed rulemaking (NPRM) was the dynamic testing of front seat manual belts. The April 1985 notice included a proposal that, in the event that the automatic protection requirements are rescinded, manual lap-shoulder belts installed at the outboard seating positions of the front seat of passenger cars would have to comply with the dynamic testing requirements of section S5.1 of Standard No. 208. The NPRM proposed also to amend Standard No. 209 to exempt belt assemblies certified as complying with the Standard No. 208 dynamic testing requirements from the webbing attachment hardware and assembly performance requirements of S4.4 of Standard No. 209.

In issuing the proposal for dynamically testing manual lap and shoulder belts, NHTSA explained that:

> In essence, this proposal would require that the combination of the manual belts as well as the vehicle's structure and interior be tested to ensure that the combination provides adequate protection to vehicle occupants. One trend which forms the basis for this proposal is the downsizing in recent years of all four vehicle types covered by this proposal. Smaller vehicles mean smaller interior spaces and therefore front seat occupants are closer to potentially hostile vehicle interior surfaces, such as windshield headers, A-pillars, instrument panels, and the like. Close physical proximity to these surfaces increases the possiblity of occupants contacting them in a crash and being injured. * * * [T]he agency has tentatively concluded that dynamic testing of manual belts may be necessary to ensure that the belt, vehicle structure, and vehicle interior combination provide a minimum level of safety for vehicle occupants. (50 FR 14594.)

The agency explained further its decision to propose amending Standard No. 209 to exempt belt assemblies certified as complying with the Standard No. 208 dynamic testing requirements from the webbing attachment hardware and assembly performance requirements of S4.4 of Standard No. 209:

> Continued application of those requirements [and the anchorage location requirements of Standard No. 210] to those manual belts would be unnecessary *since the same aspects of performance would be indirectly tested in the dynamic testing.* Further, this amendment would permit vehicle manufacturers *maximum freedom* to design and install manual belts in any way that ensures adequate protection for the user in the event of a crash. (50 FR 14595; emphasis added.)

On March 21, 1986 (51 FR 9800), NHTSA published a final rule that adopted the dynamic test requirement for safety belts used in passenger cars. On November 23, 1987 (52 FR 44898), NHTSA published a final rule that adopted the dynamic test requirement for safety belt systems in certain light trucks and multipurpose passenger vehicles, which is to become effective on September 1, 1991. As proposed in the April 1985 NPRM, the rule exempted dynamically tested manual belts from the static laboratory strength tests for safety belt assemblies set forth in S4.4 of Standard No. 209. In addition, the agency decided that an exemption from other Standard No. 209 requirements was also appropriate. NHTSA noted that the webbing of automatic belts is exempt from the elongation and other belt webbing requirements of Standard No. 209 since those belts have to meet the injury protection criteria of Standard No. 208 during a crash. This reason for exempting automatic belts, coupled with the agency's conclusion that manufacturers ought to be given maximum freedom in designing and installing dynamically-tested manual safety belts providing adequate levels of protection, led NHTSA to decide that the final rule should exempt dynamically-tested manual belts from the webbing width, strength and elongation requirements (§ 4.1 (a)–(c)) of Standard No. 209. (Safety belts that are not required to meet the injury criteria of Standard No. 208 during a dynamic test are still subject to all belt webbing requirements of Standard No. 209.) The agency recognizes and confirms that Standard No. 209's requirements for resistance to abrasion (S4.2(d)), light (S4.2(e)) and micro-organisms (S4.2(f)) do not apply to dynamically-tested belts exempted from the strength requirements of S4.2(b).

The Petitions for Reconsideration

Three petitioners—the ASBC, the NFI and Phoenix Trimming Company (Phoenix)—submitted petitions for reconsideration of the agency's March 1986 decision to exempt dynamically tested manual lap-shoulder belts from the assembly, webbing, breaking strength and elongation requirements of Standard No. 209. These petitioners raised the same arguments in support of their requests. ASBC argued that the standard's requirements for webbing width (S4.2(a)) and strength (S4.2(b)) have demonstrated their worth in assuring adequate occupant protection "by the field experience of millions of cars over a period of over 20 years." ASBC further argued, as did the other petitioners, that exempting dynamically-tested belts from the breaking strength requirement of S4.2(b) could negatively affect their long-term performance. The ASBC also submitted a petition for rulemaking asking NHTSA to delete the longstanding exemption from Standard No. 209 webbing, attachment hardware, and assembly performance requirements that S4.5.3.4 of Standard No. 208 provides for automatic safety belts. ASBC said that the reasons is gave for requesting NHTSA to remove the exemptions for dynamically-tested manual safety belts "apply equally" to dynamically-tested automatic belts.

In the September 5, 1986, **Federal Register** notice responding to several petitions for reconsideration NHTSA received for the final rule published in March 1986, the agency deferred responding to the ASBC, NFI and Phoenix petitions until NHTSA could complete its review of the issues raised therein. The agency has completed the review and is denying the petitions for the reasons set forth below.

Agency Response to Petitions

The agency believes that, since Standard No. 208's dynamic test assesses the synergistic effect of a safety belt system and a vehicle's structure and interior on occupant crash protection, and also simultaneously enables the evaluation of belt and assembly performance, similar webbing, attachment hardware and assembly requirements should be applied to manual and automatic safety belts subject to such testing. NHTSA thus concurs with ASBC's implied contention that there is no justification for exempting one type of dynamically tested belt system from Standard No. 209's requirements when the other is subject to those same requirements. However, contrary to the conclusions urged by the petitioner, NHTSA has concluded that there is insufficient reason for removing the exemption for dynamically tested automatic belts.

The agency agrees with the petitioners that Standard No. 209's requirements are "well conceived provisions" assuring adequate levels of occupant crash protection. However, the agency does not believe that applying the requirements to dynamically tested automatic safety belts is necessary to achieve such safety levels. Manufacturers' voluntary efforts to use only safety belts capable of providing adequate levels of protection are illustrated by the safety record for dynamically tested automatic safety belts. As mentioned above, NHTSA exempted dynamically tested automatic safety belts from the assembly performance and webbing requirements of Standard No. 209 in 1971. Notwithstanding this longstanding exemption, information from NHTSA's consumer complaint files revealed no complaints or problems related to webbing failures for automatic belt systems, which have been in use for more than 10 years. Because the agency's records show no evidence of any safety problems relating to the long-term performance of automatic safety belt webbing and assemblies, or to any other type of safety problem with the webbing of these belts, NHTSA finds no compelling reason to regulate webbing and assembly aspects of performance for dynamically tested belts. ASBC's petition for rulemaking to remove the exemption for dynamically tested automatic safety belts is therefore denied.

Since the exemption for automatic belts is being retained, dynamically tested manual belts will also be exempt from the requirements at issue. Again, however, NHTSA emphasizes that manufacturers have strong incentives to ensure that the belt systems installed in their vehicles provide a level of protection comparable to that required by the performance requirements of Standard No. 209. Since belt webbing and assemblies tested in the dynamic test of Standard No. 208 must perform in a manner that ensures that the injury criteria of the standard are met, the agency does not believe manufacturers will risk installing assemblies with inadequate belt webbing strength or width that might complicate their efforts in meeting the occupant crash protection standard. Further, NHTSA notes that prior to the issuance of Standard No. 209, manufacturers complied with voluntary standards for safety belts which contained identical webbing strength and width requirements to those of Standard No. 209. The agency believes that manufacturers will not now decide to install safety belt systems that are not capable of providing adequate long-term performance.

The safety record for dynamically tested automatic safety belts shows no degradation of safety performance for these belts. NHTSA finds no reason to believe that dynamically tested manual safety belts subject to the same performance requirements as automatic belts will yield negative safety effects not experienced by the latter. Since petitioners ASBC, NFI and Phoenix have not provided any data supporting their contentions that exemption dynamically tested manual safety belts from the webbing, attachment hardware and assembly requirements of Standard No. 209 will degrade safety, their petitions

for reconsideration of the agency's decision to exempt these belts are denied.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued on February 18, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-4001 Filed 2-24-88; 8:45 am]

BILLING CODE 4910-59-M

NATIONAL RAILROAD PASSENGER CORPORATION

49 CFR Part 701

Freedom of Information Act; Predisclosure Notification Procedures for Confidential Commercial and Financial Information

AGENCY: National Railroad Passenger Corporation (NRPC or the Corporation).

ACTION: Final rules.

SUMMARY: By Executive Order 12600, dated June 23, 1987 (52 FR 23781), President Reagan directed the establishment by regulations, following notice and opportunity for public comment, of procedures concerning predisclosure notification to submitters of confidential commercial or financial information requested under the Freedom of Information Act (FOIA). The following regulations provide that the National Railroad Passenger Corporation (NRPC), also known as Amtrak, shall notify submitters of records containing confidential commercial or financial information when those records are requested under the Act if NRPC determines that it may be required to disclose the records. These procedures shall apply to both the initial processing of the request and to any appeals by the requester. Further, the proposed regulations will permit submitters of confidential commercial or financial information to designate information which could reasonable be expected to cause substantial competitive harm and permit the submitter a reasonable period of time to object to the disclosure of confidential commercial or financial information. Finally, the regulations require NRPC to provide a submitter a written statement explaining why the submitter's objections are not sustained or to notify the submitter if the requester brings suit seeking to compel disclosure of confidential commercial or financial information.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Medaris Oliveri, FOIA Officer, (202) 383-3991.

SUPPLEMENTARY INFORMATION: The subject rules were published in the **Federal Register** on December 7, 1987 at pages 46381-82. In response to Amtrak's request for comments, one set of comments was received. It was pointed out that the Executive Order on which the proposed regulations were based does not override the requirements of FOIA relating to when information must be released. Further, the comments urged Amtrak to make clear that the notification procedures do not obviate Amtrak's obligation to respond to FOIA requests in a timely fashion in accordance with the Act.

Amtrak agrees with these comments but considers unnecessary any amendments to the regulations. Because the Act necessarily takes procedence over the regulations, Amtrak will observe the notice and comment periods set forth in the regulations to the extent permitted by the Act, as directed in the applicable Executive Order. Amtrak will not attempt to improve upon the President's Order by seeking to craft a more cogent and practical formula to reconcile any conflict which may arise between the Act and the regulations. Therefore, Amtrak is adopting the rules proposed on pages 46381-82 of the **Federal Register**.

List of Subjects in 49 CFR Part 701

Freedom of information.

49 CFR Part 701 is amended as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: Sec. 306(g), Rail Passenger Service Act, 45 U.S.C. 546(g).

2. Section 701.8 is added to read as follows:

§ 701.8 Notification procedures for confidential commercial and financial information.

(a) *Definitions.* For the purpose of this subsection, the following definitions apply:

(1) "Confidential commerical or financial information" means records provided to NRPC by a submitter that arguably contain material exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential or financial commercial information to NRPC. The term submitter includes, but is not limited to, corporations, state governments, and foreign governments.

(3) "Requester" means any person or entity who submits a valid request for information under the Freedom of Information Act. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice requirements.* (1) For confidential commercial or financial information submitted prior to January 1, 1988, NRPC shall, if it determines that it may be required to disclose the requested information, notify the submitter in writing prior to the release of responsive records whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial or financial information; or

(ii) NRPC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential financial or commercial information submitted on or after January 1, 1988, the submitter may designate, at the time the information is submitted to NRPC or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. NRPC shall, if it determines that it may be required to disclose the requested information, notify the submitter in writing prior to its release whenever:

(i) The records are designated pursuant to paragraph (b)(1)(i) of this section; or

(ii) NRPC has reason to believe that disclosure of the formation could reasonably be expected to cause substantial competitive harm.

(c) *Opportunity to object to disclosure.* After notification is given pursuant to paragraph (b)(1) or (b)(2) of this section, the submitter shall have ten days from the receipt of notification in which to object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

(d) *Notice of intent to disclose.* In all instances when NRPC determines to disclose the requested records, the Corporation shall provide the submitter with a written notice to include the following:

(1) A statement briefly explaining why the submitter's objections were not sustained;

(2) A description of the business information to be disclosed or a copy of the material proposed for release; and

(3) A specific disclosure date.

The notice shall be provided to the submitter ten working days prior to the specified disclosure date. The requester shall also be advised of NRPC's final determination to disclose the requested information at the same time as notification is provided to the submitter.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial or financial information, NRPC shall promptly notify the submitter.

(f) *Exceptions to notice requirements.* The notice requirements of paragraphs (b)(1) and (b)(2) of this section need not be followed if:

(1) NRPC determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with these regulations, unless Amtrak has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter appears obviously frivolous, except that NRPC will provide the submitter with written notice of any final administrative disclosure determination pursuant to paragraph (c) of this section.

(g) *Notification of requester.* Whenever NRPC notifies a submitter that it may be required to disclose information pursuant to paragraphs (b)(1) and (b)(2) of this section, NRPC shall also notify the requester that notice and an opportunity to comment are being provided to the submitter.

Harold R. Henderson,

Vice President-Law.

[FR Doc. 88-4059 Filed 2-24-88; 8:45 am]

BILLING CODE 1021-95-M

Proposed Rules

Federal Register
Vol. 53, No. 37
Thursday, February 25, 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 Part 253

Food Distribution Program on Indian Reservations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 20, 1987 (52 FR 39158), the Department proposed to amend various provisions of the overall regulations governing the Food Distribution Program on Indian Reservations. The Department solicited comments from interested parties on this proposed rule through January 19, 1988. The Department has decided to extend the comment period through April 18, 1988.

DATES: Comments on the October 20, 1987 proposed rulemaking must be received on or before April 18, 1988, in order to be assured of consideration.

ADDRESS: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660. Comments in response to the October 20, 1987 proposed rule may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION: The regulations governing the Food Distribution Program on Indian Reservations establish the responsibilities of the Food and Nutrition Service and State agencies for the distribution of federally acquired food to eligible households living on or near Indian reservations. In an effort to obtain comments from Indian tribes who would primarily be impacted by the proposed changes, copies of the proposed rules were sent directly to all currently participating Indian tribal organizations and agencies of State government. Currently we have received approximately 30 comments. The Department believes that additional comments would be very beneficial and has decided to extend the previous 90-day comment period for an additional 90 days.

Authority: 91 Stat. 980 (7 U.S.C. 2011–2027).

Date: February 19, 1988.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 88–4020 Filed 2–24–88; 8:45 am]

BILLING CODE 3410–30–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

Public Information; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Overseas Private Investment Corporation ("OPIC").

ACTION: Proposed rule.

SUMMARY: The proposed rules replace OPIC's existing regulations on public information. They set forth the procedures governing public access to information contained in the files, documents and records of the Corporation, as well as the procedures by which persons submitting confidential business information to OPIC may designate such information as exempt from disclosure under the Freedom of Information Act. In addition, the proposed rules implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) which prescribes the adoption of a government-wide uniform schedule of fees in accordance with the Office of Management and Budget Guidelines published at 52 FR 10012–10020.

DATE: Comments must be received by March 28, 1988.

ADDRESS: Comments should be sent to Ralph T. Mabry, Office of the General Counsel, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527.

FOR FURTHER INFORMATION CONTACT: Ralph T. Mabry at (202) 457–7021 or Robert Jordan at (202) 457–7093.

SUPPLEMENTARY INFORMATION: The procedures of the Overseas Private Investment Corporation ("OPIC" or the "Corporation") for responding to requests for information under the Freedom of Information Act ("FOIA" or the "Act") appear in 15 CFR Part 706. Changes in OPIC's practices, as well as legislative changes in the course of the decade since the issuance of those regulations, require some changes in OPIC's FOIA regulations. A principal purpose of the proposed new regulations is to formalize the practices and policies of the Corporation in light of these new developments and thereby to provide more detailed guidance to the public on OPIC's procedures for access to information contained in its files, documents and records.

The proposed replacement regulations include new policies and procedures relating to: (1) Predisclosure notification procedures for confidential business information; (2) designation of confidential business information; and (3) the schedule of fees to be charged in connection with the search, review and duplication of documents requested.

Pursuant to Executive Order 12600 of June 23, 1987, the proposed regulations establish procedures to notify submitters of records containing confidential business information of requests for the disclosure of this information under the Act. The proposed rules formalize OPIC's long standing policy of notifying submitters of information and giving them an opportunity to object to its public disclosure. Also proposed are procedures enabling applicants for OPIC programs who provide confidential business information in support of their applications to designate information as privileged and confidential at the time the information is submitted to OPIC.

A new fee schedule is also proposed. The amended changes are intended to reflect the Corporation's direct costs in processing FOIA requests. The schedule has been prepared in accordance with the Freedom of Information Reform Act ("FOIRA") of 1986 (Pub. L. 99–570). FOIRA requires that all federal agencies conform to a uniform charging system as

established by the Office of Management and Budget ("OMB"). The proposed new fee schedule is based on the OMB uniform fee schedule and guidelines issued March 27, 1987 (52 FR 10012). It also follows the guidelines relating to fee waivers issued by the Department of Justice on April 2, 1987.

The proposed rules are not a major rule for the purposes of Executive Order 12291 of February 17, 1981, since they are not likely to result in:

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

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

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises in domestic or export markets.

The rules hereby proposed do not contain a collection of information for the purposes of the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 706

Freedom of information.

For the reasons set forth in the preamble, OPIC proposes to amend 22 CFR Part 706 as follows:

1. 22 CFR Part 706 shall be revised to read as follows:

PART 706—DISCLOSURE OF PUBLIC INFORMATION

Subpart A—General

Sec.

Subpart B—Procedures and Fees

Subpart C—Rights of Submitters of Confidential Business Information

Authority: The Freedom of Information Act, as amended 5 U.S.C. 552.

Subpart A—General

§ 706.11 Purpose and policy.

(a) This part is adopted pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552. It establishes the procedures governing public access to information contained in the files, documents and records of the Corporation. It also sets forth the procedures by which persons submitting written information to the Corporation may designate such information as exempt from disclosure under 5 U.S.C. 552 (b)(4); and provides submitters of confidential business information with the right to be notified of a request for disclosure and to object to the disclosure of such information.

(b) This part reflects the policy of the Corporation to honor all requests for the disclosure of Corporation records provided that such disclosure does not adversely affect a legitimate public or private interest, is required and/or not prohibited by law or other authority, and would not impose an unreasonable burden on the Corporation. However, this part also reflects the view of the Corporation that the soundness and viability of many of its programs depend in large measure upon the willingness of applicants for Corporation assistance to provide full and reliable commercial, financial, technical and business information relating to the conduct of their affairs. Since the release of such information may imperil the competitive business position and credit standing of an applicant, it is essential that applicants be assured that confidential commercial or financial information which is submitted to the Corporation will not be disclosed to the public. This part is designed in part to give this assurance and thereby to encourage applicants to make complete disclosure of information bearing upon an application for OPIC assistance.

§ 706.12 Scope.

This part applies to all files, documents, records, and information obtained or produced by officers and employees of the Corporation in the course of their official duties and/or under such officer or employee's control. Specific types of files, documents, records and items of information described herein are illustrative rather than exclusive. This part does not purport to describe or set forth every file, document, record or item of information which may or may not be disclosed or to incorporate every exemption from disclosure provided by law.

§ 706.13 Definitions.

(a) Except as may be otherwise provided in paragraph (b) of this section, all terms used in this part which are defined in the Freedom of Information Act, 5 U.S.C. 552 shall have the same meaning.

(b)(1) "Act" means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) "Business information" means trade secrets or confidential or privileged commercial or financial information obtained from any person, including, but not necessarily limited to such information as is contained in individual case files relating to such activities as insurance, loans and loan guarantees.

(3) "Business submitter" means any person or entity which provides business information to the Corporation.

(4) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to the commerce, trade, or profit interests of the requester or the person on whose behalf the request is made. The term "commercial use requester" refers to any person making a commercial use request. In determining whether a requester properly belongs in this category, the Corporation will determine the use to which a requester will put the documents requested. Where the Corporation has reasonable cause to doubt the use to which a requester will put records sought, or where that use is not clear from the request itself, the Corporation may seek additional clarification before assigning the request to a specific category.

(5) "Direct costs" means those expenditures which the Corporation actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under the Freedom of Information Act.

(6) "Duplication" refers to the process of making a copy of a document available to the FOIA requester. Copies will be ordinarily in the form of a photocopy of the original document.

(7) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of vocational education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(8) "FOIA" means the Act.

(9) "Non-commercial scientific institution" refers to an institution that

is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(10) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(11) "Review" refers to the process of examining documents located in response to a "commercial use request" under the Act (as the term "commercial use request" is defined in paragraph (b)(4) of this section) to determine whether any portion of any document located is permitted to be withheld. The term "review" includes processing any documents for disclosure, including doing all that is necessary to excise exempt portions and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(12) "Search" includes all time spent looking for material that is responsive to a request, including a page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document would prove to be the less expensive and quicker method of complying with a request.

Subpart B—Procedures and Fees

§ 706.21 Information and records available to the public.

(a) *General.* Corporation information and records in existence which are not exempt from disclosure by law are available for public inspection and copying in the manner specified in § 706.23 of this part. A fee will be charged for the Corporation's expenses incurred in searching for, reviewing, duplicating, tabulating and compiling such information and records in accordance with the charging system and schedule of fees set forth in § 706.26.

(b) *Materials available from the Office of Public Affairs.* For the convenience of the public, the following Corporation materials will be maintained and readily available from the Office of Public Affairs.

(1) Current issues of the Corporation's annual report, which report ordinarily sets forth: (i) the names of recipients of Corporation insurance, loans, guarantees and other assistance during the fiscal year covered; (ii) the kind and amount of assistance provided; (iii) the purpose of the approved assistance in general terms; (iv) statistical data on Corporation programs; and (v) the audited financial statements of the Corporation;

(2) Pamphlets describing Corporation programs;

(3) Blank Corporation insurance forms currently in use; and

(4) Press releases.

(c) *Materials available from the Assistant General Counsel for Claims.* The Assistant General Counsel for Claims maintains public information files relating to the determination of claims filed under the Corporation's political risk insurance contracts and a list of all claims resolved by cash settlements or guarantees. Public access to such public information files will be granted in accordance with the procedures described in § 706.23(b) of this part.

(d) *Materials available from the Corporate Secretary.* The Corporate Secretary maintains public information files containing the minutes of the public portions of Board of Directors' meetings, as well as the resolutions of the Board of Directors. Public access to such information will be granted in accordance with the procedures described in § 706.23(c) of this part.

§ 706.22 Information and records not generally available to the public.

The following kinds of files, documents, records, and items of information, among others, are generally not available to the public:

(a) "Business information" as that term is defined in § 706.13 (b)(2) of this part;

(b) Information provided in applications for political risk insurance, loans, loan guaranties and other Corporation assistance.

(c) Insurance policies, loan agreements and loan guarantee agreements relating to specific recipients of Corporation assistance;

(d) Information on declined, withdrawn or cancelled applications for Corporation assistance;

(e) Inter-agency or intra-agency communications not routinely available to a party in litigation with the Corporation, including, among other things, memoranda between officials or agencies, Corporation staff memoranda, opinions and interpretations prepared by Corporation attorneys or consultants, research studies performed internally or under contract for internal management purposes, and internal management reports; and

(f) Personnel files and related documents containing private or personal information.

§ 706.23 Public access to information and records.

(a) *Access to routinely available information.* Corporation facilities are available to the public between 8:45 a.m. and 5:30 p.m. (except for Saturdays, Sundays and official holidays) for obtaining copies of materials of the kind described in § 706.21(b) Persons wishing to obtain copies of such documents may request them by reporting in person to the Corporation receptionist, by telephoning the office of the Director of Public Affairs at (202) 457–7093 or by writing the Corporation to the attention of such officer.

(b) *Access to the public information files on claims.* Access by any member of the public to the Corporation's public information files on claim matters described in § 706.21(c) shall be granted by appointment only. Persons desiring such access may request an appointment by telephoning the Claims Assistant at (202) 457–7019 or by writing the Corporation to the attention of such officer. Although the Corporation will endeavor to grant an appointment at the time requested, some delay may be required at times because of the small size of the Corporation's staff. Persons desiring access to the public information files should seek an appointment at least twenty-four hours in advance.

(c) *Access to public information files on board matters.* Access by any

member of the public to the Corporation's public information files described in § 706.21(d) shall be granted by appointment only. Persons desiring such access may request an appointment by telephoning the Corporate Secretary at (202) 457–7079 or by writing the Corporation to the attention of such officer.

(d) *Access to any records of the Corporation not otherwise made available by the Corporation to the public.* Access to records of the Corporation other than those described in paragraphs (b), (c) and (d) of § 706.21, or the duplication of such records, shall be granted only upon specific written request to the Corporation addressed to the Vice President, Office of Corporate Communications, which shall be deemed not to have been received until actual receipt thereof by such officer or his designee. Such request shall, to the extent required under the law, accurately describe the records as to which access or duplication is requested including, by way of example only, the subject matter, format, date, and where pertinent, the country, project or person involved. Any request which does not describe such records in sufficient detail to permit the staff of the Corporation promptly to locate them shall be deemed not to have been received by the Corporation until such time as the requester has clarified the request to meet this standard. The Corporation will make every reasonable effort by telephone or by letter to assist the person making the request to be more specific in describing the document or information sought.

§ 706.24 Notification of corporation action.

Persons making a request for disclosure normally will be notified of the availability of the material within ten working days after the date of receipt of the request. The information or records subject to release shall be made available promptly provided the requirements of § 706.26 regarding payment of fees are satisfied. Any denial of a request in whole or in part shall be made in writing and such notification shall set forth the reasons for the denial. Any person whose request for information has been denied may appeal from such determination in accordance with the provisions of § 706.27 of this part.

§ 706.25 Extension of time.

Although the Corporation will make every effort to respond to an initial request for disclosure of information within ten working days, there may be delays because of the Corporation's limited staff. Moreover, in certain circumstances the period of time within which the Corporation will respond to an inital request will be extended by an additional ten working days. Circumstances which would necessitate such an extension include the following:

(a) The need to search for and collect requested records from storage facilities located outside Corporation premises;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(c) The need for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substanital subject-matter interest therein; or

(d) The need to notify the submitter of confidential business information of the request and to allow a reasonable period for objection to disclosure per § 706.31 of this part.

It is the practice of the Corporation to inform a requester in writing or by telephone of any anticipated delays.

§ 706.26 Fees.

(a) *General policy.* A fee representing direct costs shall be charged for services rendered by the Corporation under 5 U.S.C. 552(a) in furnishing information to members of the public, in accordance with the provisions of paragraph (c) of this section and as required or permitted by law.

(b) *Anticipated fees.* A letter requesting a document or information should specifically state that all costs chargeable under this section will be paid or, alternatively that they will be paid up to a specified limit. If the letter makes no reference to anticipated fees, and the request is expected to involve fees in excess of $25, or it is estimated by the Corporation that the fee will exceed the dollar limit specified in the request, the Corporation will notify the requester of the estimated fee promptly upon receipt of the request. The request will not be deemed to have been received until the Corporation receives a reply from the requester stating its willingness to pay the estimated fee.

(c) *Uniform fee schedule.* Fees will be charged in accordance with the category of the requester and as specified below. All photocopying costs will be assessed at the rate of $0.15 per page.

(1) *Commercial use requesters.* "Commercial use requesters," as that term is defined in § 706.13, will be charged the direct cost of all time spent searching for and reviewing for release the records requested. Search costs are $13 per hour. Review costs are $33 per hour. Search and review costs will be assessed even though no records may be found or, after review, there is no disclosure of records. All pages photocopied will be assessed at the rate set out above.

(2) *Educational and non-commercial scientific institution requesters.* The Corporation will provide records to "educational institutions" or "non-commercial scientific institutions," as those terms are defined in § 706 .13 (b)(7) and (b)(9) of this part, for the cost of reproduction alone. No fee will be charged for the costs of photocopying the first 100 pages of documents encompassed by a request. The fee for all pages photocopied will be assessed at the rate set out above. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying "educational institution" or "non-commercial scientific institution" and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Representatives of the news media.* The Corporation shall provide records to "representatives of the news media," as that term is defined in § 706.13 (b)(10) of this part, for the cost of reproduction alone. No fee will be charged for the costs of photocopying the first 100 pages of documents encompassed by a request. The fee for all pages photocopied will be assessed at the rate set forth above. To be eligible for inclusion in this category a requester must be a "representative of the news media" and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not considered to be a request that is for a commercial use.

(4) *All other requesters.* The Corporation will provide documents to requesters who do not fit into any of the categories in paragraphs (c) (1), (2), and (3) of this section for the cost of any search time in excess of two hours and for photocopying any documents in excess of 100 pages. The fee for search time will be assessed at the rate set forth in paragraph (c)(1) of this section. The fee for all pages photocopied will be assessed at the rate set forth above.

(d) *Non payment of fees.* (1) The Corporation will begin assessing interest charges on the 31st day following the day on which the requester is advised of the fee charged, such interest charges to

accrue as of the date of such notification. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the billing date), the Corporation will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the Corporation begins to process a new request or a pending request from the requester.

(3) When the Corporation acts under paragraph (c)(1) or (2) of this section the administrative time limits prescribed in subsection (a)(6) of the Act (i.e. 10 working days from receipt of initial request and 20 working days from receipt of appeals from initial denial plus permissible extensions of these time limits) will begin only after the Corporation has received fee payments described above.

(e) *Advance payments.* Where the Corporation estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250 the Corporation will require a requester to make an advance payment of the entire fee before continuing to process the request.

(f) *Waiving or reducing fee.* In accordance with section (4)(A)(ii) of the Act the Corporation will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(g) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. These provisions work together so that, except for commercial use requesters, the Corporation will not begin to assess fees until after providing the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, the agency will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of processing the fee collected there will be no charge to the requester.

(h) *Documents made available free of charge.* No fee will be charged to any requester for any brochure or annual report readily available from the Office of Public Affairs pursuant to § 706.21(b).

(i) *Inspection.* Persons may inspect and copy in the Corporation's facilities specifically requested documents other than those which are not generally available under § 706.22 or exempt by law without charge except for search, duplication, tabulation, or compilation fees which may be otherwise payable.

(j) *Other provisions.*—(1) *Charges for unsuccessful search.* The Corporation will assess charges for time spent searching, even if the Corporation fails to locate the records or if records located are determined to be exempt from disclosure.

(2) *Aggregating requesters.* When the Corporation reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation will aggregate any such requesters and charge accordingly.

(3) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* The Corporation will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

(4) *Remittances.* (i) All payments under this section shall be in the form of a personal check, bank draft drawn on a bank located in the United States, or cash. Remittances shall be made payable to the order of "Overseas Private Investment Corporation" and mailed to the Director of Public Affairs, Office of Corporate Communications, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527. The Corporation will assume no responsibility for cash which is lost in the mail.

(ii) A receipt for fees paid will be given only upon request.

(iii) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The requester is at any time welcome to confer with the Director of Public Affairs in order to formulate the request in a manner which will reduce the fee and meet the needs of the requester. A request will not be deemed to have been received until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

§ 706.27 Administrative appeal of refusal to disclose.

(a) *Who may appeal.* Any person whose request for information or records has been denied in whole or in part shall be entitled to submit a written appeal to the Corporation.

(b) *Time for appeal.* An appeal from a denial may be filed with the Corporation at any time within 20 days following the date of receipt of the initial determination, in cases of denials of an entire request, or from the date of receipt of any records being made available under an initial determination in cases of partial denials.

(c) *Form of appeal.* An appeal shall be by letter addressed to the Vice President & General Counsel, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527. The envelope and the letter setting forth the appeal shall be clearly marked in capital letters: FREEDOM OF INFORMATION ACT APPEAL. The letter shall reasonably describe the information or records requested and such other pertinent facts and statements as the appellant may deem appropriate. An appeal submitted in an envelope which is not addressed to the Vice President & General Counsel will not be deemed to have been received until such time as the appeal is forwarded to such officer.

(d) *Final Corporation decision.* Final Corporation decisions on appeals from denials of requests for information or records shall be made in writing by the Vice President & General Counsel or his/her designee within twenty working days after the date of receipt of the request, unless an extension of up to ten working days has been deemed necessary in accordance with the procedures set forth in § 706.25 of this part. The 10-day extension may be applied to the response to the initial request or to the appeal, or to both, but in no event shall the extension exceed a total of ten working days. If the decision upholds the denial of the request, the appellant shall be notified in writing, which notice shall set forth the reasons for upholding the previous denial. If the Vice President & General Counsel or his/her designee acts favorably on the appeal, the information or records requested shall be made available promptly provided the requirements of § 706.26 regarding payment of fees are satisfied.

Subpart C—Rights of Submitters of Confidential Business Information

§ 706.31 Notification to submitters of business information.

(a) Except as provided in paragraph (c) of this section, the Director for Public Affairs will promptly notify a "business submitter" (as that term is defined in § 706–13(b)(3) of this part) that a request for disclosure has been made for any "business information" (as that term is defined in section 706(b)(2) of this part) provided by such submitter, and shall describe the nature and scope of the request and advise such submitter of its right to submit written objections in response to the request. Such notice of intent to disclose shall be made to the submitter in writing and shall state the intent of the Corporation to disclose the business information on the expiration of 10 working days from the receipt of the notice.

(b) The business submitter may, within 10 working days of the forwarding of the Corporation's notification under paragraph (a) of this section, submit to the attention of the Director for Public Affairs, with copy to FOIA Counsel, written objection to the disclosure of the information requested, specifying the grounds upon which it is contended that the information should not be disclosed. In setting forth such grounds, the submitter shall specify to the maximum extent feasible the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In the case of information which the submitter believes to be exempt from disclosure under subsection (b)(4) of the Act, the submitter shall demonstrate why the information is considered a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Act. The 10 working day period for providing the Corporation with a statement objecting to the disclosure of information encompassed by an FOIA request may be extended by the Corporation upon receipt of a written request for an extension. Such written request shall set forth the date upon which the statement is expected to be completed and shall provide reasonable justification for the extension. The Corporation's approval of a request for an extension shall not be unreasonably withheld.

(c) The Corporation will not ordinarily notify the submitter pursuant to paragraph (a) of this section if:

(i) The Corporation determines, prior to giving such notice, that the request should be denied;

(ii) The disclosure is required by law (other than pursuant to 5 U.S.C. 552); or

(iii) The information has been published or otherwise made available to the public, including material described in § 706.21.

(d) The Corporation shall carefully consider the objections of the submitter made pursuant to paragraph (b) of this section and shall promptly notify the submitter of any final determination regarding the release of the information requested.

§706.32 Prior designation of business information as privileged or confidential.

In order to facilitate the Corporation's determination of whether to disclose information submitted to it a submitter may designate information which it regards as confidential business information entitled to exemption from disclosure under 5 U.S.C. 552(b)(4). Such designation may be made at the time such information is submitted to the corporation or at any time thereafter. Each document, record or item of information to be so designated shall be clearly marked in capital letters: PRIVILEGED BUSINESS INFORMATION. In accepting documents, records or any item of information so marked, the Corporation shall not be bound by such designation.

Ralph T. Mabry,

Senior Commercial Counsel.

[FR Doc. 88–4050 Filed 2–24–88; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 150

[Docket No. 71038–7238]

Requests for Presidential Proclamations Under the Semiconductor Chip Protection Act, 17 U.S.C. 902(a)(2)

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to add a new Subchapter C, Part 150, to its rules in order to implement the Presidential proclamation provisions of the Semiconductor Chip Protection Act of 1984, 17 U.S.C. 902(a)(2).

DATE: Comments should be received by March 28, 1988. No hearing will be held.

ADDRESS: Send comments to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231, Attention: Michael K. Kirk, Assistant Commissioner for External Affairs.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs at (703) 557–3065.

SUPPLEMENTARY INFORMATION: The Semiconductor Chip Protection Act of 1984 (SCPA) establishes a new form of intellectual property protection for mask works that are fixed in semiconductor chips. Mask works are defined as a "series of related images, however fixed or encoded," that represent the three dimensional pattern in the layers of a semiconductor chip. The SCPA provides a 10-year term of protection for original mask works measured from their date of registration or first commercial exploitation anywhere in the world. Mask works must be registered in the United States Copyright Office within two years of first commercial exploitation to maintain protection.

Section 902 sets out three different ways in which foreign mask works may become eligible for protection in the United States. First, on the date the work is registered under section 908 or is first commercially exploited anywhere in the world, the mask work is protectable if its owner is a national, domiciliary or sovereign authority of a foreign nation that is a party to a treaty that provides protection of mask works and to which the U.S. is also a party, or a stateless person wherever domiciled. The second way in which a mask work may be protected is where it is first commercially exploited in the United States. The third way, set forth in section 902(a)(2), is where the mask work comes within the scope of a Presidential proclamation. The President may issue a proclamation upon a finding that a foreign nation extends protection to mask works of owners who are nationals or domiciliaries of the United States on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation; or on substantially the same basis as provided in the SCPA to mask workers of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries or sovereign authorities of that nation, or which are first

commercially exploited in that nation. By virtue of Executive Order 12504 of January 31, 1985, requests for issuance of a proclamation are to be presented to the President through the Secretary of Commerce.

Congress included section 914 in the SCPA to encourage foreign nations to enact chip protection laws that would meet the requirements for issuance of a Presidential proclamation under section 902. Section 914(a) provides that the Secretary of Commerce may issue interim orders extending protection to nationals, domiciliaries, and sovereign authorities of foreign nations where the Secretary finds that certain conditions are met. The Secretary must find that the foreign nation is making good faith efforts and reasonable progress toward entering into a treaty with the United States affording protection to mask works, or is in the process of enacting legislation which will protect U.S. mask works on the same basis as domestic mask works or at a level of protection similar to the SCPA. The Secretary must also find that nationals, domiciliaries and sovereign authorities of the foreign nation are not engaged in the misappropriation, unauthorized distribution, or commercial exploitation of mask works. Finally, the Secretary must determine that the order promotes the purposes of chapter 9 and international comity with respect to protection of mask works.

By Amendment 1 to Department Organization Order 10–14, issued December 3, 1984, the Secretary of Commerce delegated the responsibility to the Assistant Secretary and Commissioner of Patents and Trademarks to determine whether an interim order should be issued. Amendment 2 to Department Organization Order 10–14, effective September 28, 1987, expanded the earlier delegation of authority and superceded Amendment 1. Amendment 2 continues the delegation of authority under section 914 and further delegates the responsibility of prescribing regulations for the presentation to the President of requests for the issuance of proclamations under section 902.

The Patent and Trademark Office has developed guidelines regulating the submission of applications, entitled "Application for Interim Protection of Mask Works under 17 U.S.C. 914." The guidelines point out that the Commissioner initiates proceedings upon receipt of a petition requesting issuance of an order, or upon his own motion. The petition must contain information which shows that the foreign nation is making progress in extending protection to mask works in accordance with the provisions of section 914. A proceeding is initiated by publication of a notice in the **Federal Register** providing interested parties with an opportunity to submit relevant comments. The Commissioner then decides to issue an order or refuse a petition on the basis of the foreign government's actions.

Information obtained under section 914 proceedings provides the foundation to determine whether a section 902 Presidential proclamation should be issued. An evaluation concerning the issuance of section 902 proclamation will be initiated by the Commissioner upon request of a foreign government or upon his own motion. If a foreign government requests a section 902 proclamation prior to a section 914 proceeding, the Commissioner may initiate a section 914 proceeding if needed to gather any necessary additional information and, where appropriate, to provide interim protection while the section 902 request is in process. Section 902 requests will be available to the public through publication in the **Federal Register.** Upon publication of the section 902 request or a notice of the Commissioner's determination to self-initiate a 902 process, the public will be given an opportunity to respond with written comments. A public hearing may be held for section 902 requests if relevant and if material issues are raised that cannot be resolved by informal discussions. The request, any comments received, and information obtained during any section 914 proceeding will be considered in making the decision whether to forward a recommendation to the President to issue a section 902 proclamation.

This notice sets forth proposed regulations that specify the content and procedures for submission of requests to the Secretary of Commerce to obtain a Presidential proclamation for protection of foreign mask works pursuant to the SCPA. The Secretary of Commerce by Amendment 2 to Department Organization Order 10–14 dated September 28, 1987, has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks the responsibility of issuing regulations for evaluating section 902 requests and making a recommendation regarding the issuance of a Presidential proclamation. These proposed regulations set forth, in accordance with statutory provisions, the procedures to be followed and the information required to be submitted so that the determination required by the statute can be made.

Other Considerations

This rule does not have a significant impact on the quality of the human environment or the conservation of natural resources.

The rule is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act. Pub. L. 96–354). The economic impact of a Presidential proclamation on small entities holding rights in U.S. mask works will be beneficial, since such proclamations may be issued only upon a finding that a foreign nation extends protection to U.S. mask works.

The Patent and Trademark Office has determined that this rule is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. By extending protection to foreign mask work owners, the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets will be enhanced.

The rule will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 150

Administrative practice and procedure, Authority delegations, Semiconductor chips, mask works.

For the reasons set out in the preamble and under the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Executive Order 12504 of January 31, 1985, and Amendment 2 to Department Organization Order 10–14, effective September 28, 1987, Chapter 1 of Title 37 CFR is proposed to be amended by adding a new Subchapter C, Part 150, as follows:

SUBCHAPTER C—INTERNATIONAL PROTECTION OF MASK WORKS

PART 150—REQUESTS FOR PRESIDENTIAL PROCLAMATIONS PURSUANT TO 17 U.S.C. 902(a)(2)

Sec.
150.1 Definitions.
150.2 Initiation of evaluation.
150.3 Submission of requests.
150.4 Evaluation.
150.5 Duration of proclamation.
150.6 Mailing address.

Authority: 35 U.S.C. 6; E.O. 12504; and delegation of authority by the Secretary of Commerce, Amendment 2 to Department Organization Order 10–14, effective September 28, 1987.

§ 150.1 Definitions.

(a) "Commissioner" means Assistant Secretary and Commissioner of Patents and Trademarks.

(b) "Interim order" means an order issued by the Secretary of Commerce under section 914 of Title 17, U.S.C.

(c) "Mask work" means a series of related images, however fixed or encoded—

(1) Having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconducter material present or removed from the layers of a semiconducter chip product; and

(2) In which series the relation of the images to one another is that each image has the pattern of the surface of the semiconducter chip product.

(d) "Presidential proclamation" means an action by the President extending to foreign nationals, domiciliaries and sovereign authorities the privilege of making registrations for mask works pursuant to section 902 of Title 17, U.S.C.

(e) "Request" means a request by a foreign government for the issuance, or a request by any interested party for the revocation, of a Presidential proclamation.

(f) "Proceeding" means a proceeding to issue an interim order extending protection to foreign nationals, domiciliaries and sovereign authorities under Chapter 9 of Title 17, U.S.C.

(g) "Secretary" means Secretary of Commerce.

§ 150.2 Initiation of evaluation.

(a) The Commissioner on his own initiative or as directed by the Secretary may initiate an evaluation of the propriety of recommending the issuance of a section 902 proclamation.

(b) The Commissioner shall initate an evaluation of the propriety of recommending the issuance of a section 902 proclamation upon receipt of a request from a foreign government.

§ 150.3 Submission of requests.

(a) Requests for the issuance of a section 902 proclamation shall be submitted by foreign governments for review by the Commissioner.

(b) Requests shall include:

(1) An official copy of the foreign law or legal rulings that provide protection for U.S. mask works and upon which the request is based.

(2) An official copy of any regulations or administrative orders implementing the protection.

(3) An official copy of any laws, regulations or administrative orders establishing or regulating the registration (if any) of mask works.

(4) Any other relevant laws, regulations or administrative orders.

(5) All material submitted must be originally in English or the original language accompanied by a certified English translation.

§ 150.4 Evaluation.

(a) Upon submission of a request by a foreign government for the issuance of a section 902 proclamation, if an interim order under section 914 has not been issued, the Commissioner may initiate a section 914 proceeding if additional information is required.

(b) If an interim order under section 914 has been issued, the information obtained during the section 914 proceeding will be used in evaluating the request for a section 902 proclamation.

(c) After the Commissioner receives the request of a foreign government for a section 902 proclamation, a notice will be published in the **Federal Register** to request relevant and material comments on the adequacy and effectiveness of the protection afforded U.S. mask works under the system of law described in the notice. Comments should include detailed explanations of any alleged deficiencies in the foreign law or any alleged deficiencies in its implementation. If the alleged deficiencies include problems in administrative procedures such as registration, the respondent should include as specifically as possible full detailed explanations, including dates for and the nature of any alleged problems.

(d) The Commissioner shall notify the Register of Copyrights and the Committees on the Judiciary of the Senate and the House of Representatives of the initiation of an evaluation under these regulations.

(e) If the written comments submitted by any party present relevant and material reasons why a proclamation should not issue, the Commissioner will:

(1) Contact the party raising the issue for verification and any needed additional information;

(2) Contact the requester to determine if the issues raised by the party can be resolved; and,

(i) If the issues are resolved continue with the evaluation; or,

(ii) If the issues cannot be resolved on this basis, the Commissioner may hold a public hearing to gather additional information.

(f) The comments, the section 902 request and additional information if any, obtained from a section 914 proceeding, will be evaluated by the Commissioner.

(g) The Commissioner will forward the information to the Secretary, together with his evaluation and a draft recommendation.

(h) The Secretary will forward a recommendation regarding the issuance of a section 902 proclamation to the President.

§ 150.5 Duration of proclamation.

(a) The recommendation for the issuance of a proclamation may include terms and conditions for the continued effectiveness of the proclamation.

(b) Requests for revocation of a proclamation may be submitted by any interested party. Such requests will be considered in the same manner as requests for the issuance of a section 902 proclamation.

§ 150.6 Mailing address.

(a) Requests and all correspondence submitted pursuant to these guidelines shall be addressed to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

(b) For further information contact: Assistant Commissioner for External Affairs (703) 557–3065. Mail inquiries should be directed to the same address indicated above.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Date: January 8, 1988.

[FR Doc. 88–4019 Filed 2–24–88; 8:45 am]

BILLING CODE 3510–16–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 87-7]

Cable Compulsory License Specialty Station and Significantly Viewed Signal Determinations; Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office has received petitions from members of the public to make certain determinations concerning the administration of the cable compulsory license, section 111, Title 17 U.S.C. The requests generally seek guidance with respect to the determination of local versus distant signal status and possible changes in the list of specialty broadcast stations originally developed by the Federal Communications Commission. The purpose of this notice is to elicit public comments, views, and information which will inform the Copyright Office as to the advisability of making new policy determinations and/or amending its cable compulsory licensing regulations in 37 CFR 201.17 in response to these requests.

DATES: Comments should be received on or before April 25, 1988. Reply comments should be received on or before May 25, 1988.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20540. Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION:

1. Request for Redetermination of Specialty Station Status

On February 18, 1987, the Copyright Office received from the Motion Picture Association of America, Inc. ("MPAA") a request that the Copyright Office issue a new listing of specialty stations because the list of specialty stations identified in 1976 by the Federal Communications Commission ("FCC") is substantially out of date. Specialty station status is significant in the administration of the cable compulsory license because a cable system may carry the signal of a television station classified as a specialty station under the FCC's regulations in effect on June 24, 1981, at the relevant non-3.75% royalty rate for "permitted" signals. *See* 49 FR 14944, 14951 (April 16, 1984), and section 111 of the Copyright Act of 1976, Title 17 of U.S. Code.

On February 26, 1976, the FCC adopted specialty station regulations that permitted the carriage by cable systems of specialty stations or stated types of specialty programming without regard to the FCC's other distant signal carriage limitations. *First Report and Order in Docket 20553*, FCC 76-189, 58 FCC 2d 442 (1976). The FCC defined a specialty station as "a commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of weekly prime-time hours." 47 CFR 76.5(kk) (1976). In adopting this definition, the FCC acknowledged that situations would arise wherein a specialty station changes its format after having been carried for a significant amount of time. The FCC determined that because its aim was to assure that only those stations "that are, and intend to remain, predominantly specialty-oriented" obtain the benefit of the new specialty rule, "any specialty station that undergoes a format change will lose its specialty station status." 58 FCC 2d at 460.

On June 29, 1976, the FCC adopted certain amendments to its specialty station provisions and published in Appendix B to its *Memorandum Opinion and Order* a list of 26 stations which the FCC confirmed to be specialty stations. *Memorandum Opinion and Order in Docket No 20553*, FCC 76-623, 60 FCC 2d 661, 669 (1976). The FCC's analysis was based on examination of program schedules from *TV Guide* magazine for given time periods. The FCC determined that an application by a cable system to carry a specialty station included on the list would be automatically granted by the FCC, so long as the application was unopposed. A cable system proposing to carry a station that was not included on the list on a specialty basis would bear the burden of proving that the station qualifies for carriage as a specialty station. 60 FCC 2d at 668.

In the time period between the adoption of the Appendix B specialty station list and the elimination of the FCC's distant signal carriage rules, the FCC approved carriage of at least seven additonal stations on a specialty basis for a total of 33, and did not delete any stations from the Appendix B list. The FCC ceased to consider the specialty station status of signals carried by cable systems after the effective date of the deletion of its distant signal carriage rules. *See Malrite T.V. of New York v. FCC*, 652 F2d 1140 (2d Cir. 1981), *cert. den.*, 454 US 1143 (1982) (affirming FCC deletion of distant signal carriage rules).

MPAA argues that since the time the Appendix B list of specialty stations was compiled at the FCC, the television station industry has changed considerably and that the changed circumstances compel reexamination of which stations meet the programming requirements for continued identification as specialty stations. MPAA requests that the Copyright Office instigate the revision and continued updating of the list so that the list reflects the current specialty programming broadcast by television stations.

MPAA suggests that verification of the specialty status of individual stations might be accomplished in a number of ways: There might be a "general consensus" among commenting parties as to which stations should be added to or deleted from the Appendix B list. The Copyright Office might examine program logs or other records provided by the stations to rewrite the list; or the Copyright Office might examine a published source agreed to by the parties, such as *TV Guide*. To keep the list current, MPAA requests that the Copyright Office consider on an *ad hoc* basis petitions by interested parties to change the status of a particular station. MPAA suggests that specialty station status should continue to be based upon the same source material used in the initial revision of the list. MPAA attached to its petition a list of 12 stations from the Appendix B list that MPAA contends do not have the specialty programming required under the former FCC rules, and a list of stations that do qualify for specialty station status, including a number of stations that were not on the Appendix B list or the revised list of 33 from 1981.

On March 18, 1987, the Copyright Office received from the Christian Broadcasting Network, Inc. ("CBN"), comments in opposition to MPAA's request. CBN argues that, in accordance with the terms of the Copyright Royalty Tribunal's ("CRT") 1982 rate adjustment, the carriage by any cable system on June 24, 1981, is exempt from the 3.75% rate, regardless of later changes in the nature of programming on that signal. As a rationale for this argument, CBN contends that "the CRT regulation

applies to *signals*, without regard to their content."

CBN also argues that its position is supported by the Copyright Office interpretation of the CRT rate adjustment expressed in the preamble to the Office's April 16, 1984 interim regulations. 40 FR 14944, 14951 (Copyright Office found that "the relevant non-3.75% rate applies to carriage of an unlimited number of specialty stations identified as such by the FCC on June 24, 1981").

Finally, CBN argues that carriage by a cable system of the signal of a station that was a specialty station on June 24, 1981 can never be subject to the 3.75% rate because the 3.75% rate adjustment can only apply to additional distant signal equivalents resulting from carriage of a formerly restricted signal. CBN reasons that, since carriage of specialty station signals had been permitted without limitation under the FCC's former distant signal carriage rules, there cannot be an "additional" distant signal equivalent resulting from carriage of a specialty station as a result of the FCC's 1980 cable deregulation, and the CRT does not have the authority to impose an increased royalty rate on carriage of a signal that qualified as a specialty station on June 24, 1981.

CBN also criticized MPAA's suggestions for implementing a Copyright Office revision of the specialty station list. CBN argues that the Copyright Office does not have the expertise in program classification required to answer the questions of whether a particular program is "religious," whether a program containing some, but not all, speech in a language other than English is "foreign language," and just what constitutes "automated" programming. Nor, CBN contends, does the Copyright Office have the resources to monitor program logs to keep an amended specialty station list up-to-date. CBN queries whether the Copyright Office has the statutory authority to take the action requested by MPAA.

On an initial review of the issues raised by MPAA in its Request for Redetermination of Specialty Station Status, by CBN in its Comments in Opposition, and again by MPAA in its Reply (received by the Copyright Office on May 5, 1987), the Copyright Office is initially inclined to agree with MPAA that specialty station status for purposes of applying the cable compulsory license should depend upon the current specialty programming broadcast by the station. This would give meaning to the FCC regulations in effect on June 24, 1981, which looked to a changing group of specialty stations as circumstances warranted, and which were established to encourage cable systems to further the goal of diversity in programming for public benefit. Just as the compulsory cable license mechanism is arguably flexible enough to respond to market changes and the existence of stations that newly become significantly viewed in a particular community, so it is arguably flexible enough to reflect changed status of a specialty or nonspecialty station.

However, the Copyright Office is reluctant to engage in the specialty station verification procedures suggested by MPAA. The implementation and maintenance of a procedure for the verification of specialty station status would be administratively costly and would further involve the Copyright Office with responsibilities that may properly belong to the FCC. The Copyright Office is considering, as an alternative to establishing verification procedures, a policy of accepting without question a claim filed by a cable system that a particular station was carried on a specialty station basis, so long as the statement of account is accompanied by a specific affidavit, signed by the cable system operator. In the affidavit the cable system operator must swear that the station carried as a specialty station qualifies as such under the FCC's definition at 47 CFR 76.5(kk)(1976). The Office is also considering accepting for the official record any evidence gathered by a television station, cable system, or other entity that demonstrates whether a particular television broadcast station qualifies for specialty station status.

The Copyright Office specifically invites interested parties to address any and all issues relevant to the determination of policy on how, for purposes of administering the cable compulsory license, the Copyright Office should determine the specialty station status of a particular television broadcast station.

2. Determination of Significantly Viewed Status

Under the FCC's must-carry rules in effect until 1985, cable systems were required to carry on a must-carry basis the signals of commercial broadcast stations that were significantly viewed in communities in which the systems were operating. 47 CFR 76.57(a)(4), 76.59(a)(6), 76.61(a)(5)(1981). Because of their must-carry status under communications law, significantly viewed signals are considered local signals under the definition of "local service area of a primary transmitter" in section 111(f) of the Copyright Act. Thus, a cable system's carriage of a significantly viewed signal does not incur distant signal royalty liability under the cable compulsory license.

Until the invalidation of the FCC's pre-1986 must-carry rules,[1] the Copyright Office's Licensing Division examiners verified the significantly viewed status of stations in the community of a particular cable system by first referring to Television Digest's *Cable and Station Coverage Atlas* for the relevant year. If a system claimed significantly viewed status for a station not listed as significantly viewed in the *Atlas*, the examiner would ask the cable system to provide evidence that the FCC considered the station significantly viewed. The FCC generally issued a notice of the significant viewership of a station in a particular area.

Since the time that the FCC's must-carry rules were first struck down by the United States Court of Appeals for the District of Columbia Circuit in the *Quincy* decision, the FCC has been reluctant to offer any formal determinations on whether particular signals would have been considered must-carry signals for certain cable systems under the former rules. As a result, the Copyright Office has received requests that the Office implement a new procedure for determining when a particular broadcast station is significantly viewed. Although the Commission has apparently resumed its former practice on verification of significant viewership, the FCC did cease making such verifications for some time, and the Copyright Office cannot be certain that the FCC will not do so again.

The Copyright Office invites interested parties to address all issues relevant to the determination of policy on how, for purposes of administering the cable compulsory license, the Copyright Office should determine the significant viewership status of a particular television broadcast station in a particular area.

The Office also invites commentary on the issue of *when* significantly viewed status arises for purposes of the calculation of royalties under the cable compulsory license—at the time the appropriate survey results are issued, at the time the surveys are evaluated by some governmental authority, or at some other time. The Copyright Office is

[1] *See Quincy Cable TV, Inc. v. FCC*, 768 F2d 1434 (D.C. Cir. 1985), *cert. denied sub nom. National Ass'n of Broadcasters v. Quincy Cable TV, Inc.*, 106 S Ct 2889 (1986). A second set of modified must-carry rules has also been invalidated by the court in *Century Communications Corp. v. FCC*, No. 86-1683 (D.C. Cir. December 11, 1987).

aware that for purposes of the operation of its network nonduplication rules, the FCC has a policy that a station will be considered significantly viewed as soon as the required viewership data has been ascertained, as long as the parties involved have no objection to the accuracy of the data provided; the FCC's rules do not require an official determination from the FCC. *See In re WPDS (TV), Memorandum Opinion and Order in CSR–2725, CSR–2809* para. 13, slip. op. (Feb 11, 1986, released; Feb. 7, 1986, adopted). However, for purposes of the cable compulsory license, this policy may not be administratively efficient. Unlike cable systems operators and television broadcast station operators, copyright owners are not in a position to know if and when an interested party will object to the viewership surveys made concerning the broadcast of a particular television station in a particular locality. Nor is the Copyright Office aware of any protests of significant viewership status that might be filed with the FCC. Therefore, the Copyright Office has traditionally taken the view that significantly viewed status arises, for purposes of the cable compulsory license, at the time the FCC issues a formal determination of the significantly viewed status of a particular television broadcast station in a particular area.

A related issue follows when the significantly viewed status arises in the middle of an accounting period: to what extent is carriage of the signal prior to the status change considered carriage on a distant signal? If the signal is carried for part of an accounting period of a "distant" basis prior to the change to significantly viewed status, why should not the DSE be applied for the entire accounting period pursuant to 37 CFR 201.17 (h)(3)(i)?

Dated: January 29, 1988.

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

Librarian of Congress.

[FR Doc. 88–4034 Filed 2–24–88; 8:45 am]

BILLING CODE 1410–08–M

POSTAL SERVICE

39 CFR Part 111

Mailer Endorsement Specifications for Requesting Ancillary Services

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes strengthened regulations governing the endorsements through which a mailer requests certain forwarding or address correction services if a mail piece is undeliverable as addressed. To reduce confusion and communication problems, increased standardization of endorsements is needed. The proposal includes revised authorized abbreviations for some endorsements. Furthermore, mail with endorsements that do not meet established specifications would be subject to refusal.

DATES: Comments must be received on or before March 28, 1988.

ADDRESS: Written comments should be directed to John Sadler, Office of Address Information Systems, Delivery Services Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC 20260–7230. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Office of Address Information Systems, Delivery Services Department, Room 7417, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Sadler, (202) 268–3523.

SUPPLEMENTARY INFORMATION: Currently, the postal regulations governing the use of endorsements by mailers requesting ancillary services for undeliverable mail suggest the preferred phrasing, abbreviations, and placement of mailer endorsement information. However, obsolete and invalid endorsements are frequently still used. In addition, the placement of these endorsements by the mailer is often inconsistent or obscured. As a result, the mailer's intent has been unclear to postal employees in many cases. Such improperly endorsed mailpieces run the risk that the ancillary service the mailer wants will not be understood or provided as intended.

Delivery personnel have requested that we clarify and standardize mailer ancillary service endorsement phrasing, placement and clarity. They have indicated that many currently used abbreviations are difficult to interpret and that placement of ancillary service endorsements is critical to recognizing what the mailer wants and giving proper treatment to the mail.

Based upon these requests, the Postal Service has developed proposed changes in its mailer endorsement specifications for ancillary services and is seeking comments. Furthermore, the proposed changes would make the specified endorsements mandatory, so that the Postal Service would no longer honor any mailer ancillary service endorsement that fails to meet the endorsement specifications outlined in the Domestic Mail Manual. Mail which does not meet these endorsement specifications would not be acceptable for mailing.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments to the Domestic Mail Manual which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation in 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 122—DELIVERY ADDRESS

2. In Part 122, 122.17 is revised as follows:

122.17 Endorsements.

A mailer's specific instructions for forwarding mail (see 159.2), as well as requests for address correction service or return (see 159.3), must appear below the sender's return address. A full return address must be used with these endorsements. On letter-size mail, the information must appear in the upper left corner of the address side of the piece, directly below the return address; on other mail, the information must appear in the upper left corner directly adjacent to the address area. Endorsements must be no smaller than the print size of the return address or the recipient's address, whichever is larger. Endorsements must be printed so that they read in the same direction as the delivery address. There must be a clear space of at least ¼ inch above and below the endorsement. A reasonable degree of color contrast must be maintained between the endorsement and the background of the mailpiece. Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colors and reverse printing are not permitted. See Exhibit 159.151a–f for specific mailer endorsements authorized for each class of mail.

Note.—Our preference for mailer endorsement print size is 8 point Helvetica

medium type or a manufacturer's generic equivalent.

Examples:

a. Frank B White, 2416 Front Street, St Louis MO 63135–1234

FORWARDING & RETURN POSTAGE GUARANTEED

b. Frank B. White, 2416 Front Street, St Louis MO 63135–1234

ADDRESS CORRECTION REQUESTED

c. Frank B. White, 2416 Front Street, St Louis MO 63135–1234

FORWARDING & RETURN POSTAGE GUARANTEED ADDRESS CORRECTION REQUESTED

d. Frank B. White, 2416 Front Street, St Louis MO 63135–1234

FORWARDING & ADDRESS CORRECTION REQUESTED

* * * * *

PART 159—UNDELIVERABLE MAIL

3. In Part 159, 159.151 is revised as follows:

159.15 Treatment of Undeliverable-as-Addressed Mail.

.151 Except as provided in 159.153, mail that is undeliverable as addressed may be forwarded, returned to the sender, or treated as dead mail, depending on the treatment authorized for that particular class of mail. A summary of the procedures for handling undeliverable-as-addressed mail is presented in Exhibits 159.151a–f. The chapters covering each class contain more detailed provisions. A full return address must be used with these endorsements. On letter-size mail, the information must appear in the upper left corner of the address side of the piece, directly below the return address; on other mail, the information must appear in the upper left corner directly adjacent to the address area. Endorsements must be no smaller than the print size of the return address or the recipient's address, whichever is larger. Endorsements must be printed reading in the same direction as the delivery address. There must be a clear space of at least ¼ inch above and below the endorsement. The endorsements must stand out clearly against the background. A reasonable degree of color contrast must be maintained between the endorsement and the background of the mailpiece. Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colors and reverse printing are not permitted. Mail bearing an endorsement that does not meet these requirements will not be accepted for mailing. If mail enters the mailstream without review and bears an endorsement that does not meet these requirements, it will be treated as if the endorsement was not present. The requested ancillary service will not be provided.

Note.—Our preference for mailer endorsement print size is 8 point Helvetica medium type or a manufacturer's generic equivalent.

4. Exhibits 159.151a through 159.151f are amended in the "Notes:" and footnotes sections as follows:

Exhibit 159.151a

* * * * *

Notes:

These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time.

When necessary, more than one line may be used to print the mailer endorsement.

The following endorsements or their variations are not authorized for First-Class Mail:

Forwarding & Return Postage Guaranteed.
Forwarding and Return Postage Guaranteed. Address Correction Requested.
Return Postage Guaranteed.

Exhibit 159.151b

* * * * *

Notes:

These regulations apply to mail associated with a customer's change of address. Do not provided termporary change of address information at any time.

When necessary, more than one line may be used to print the mailer endorsement.

The following endorsements or their variations are not authorized for second-class mail:

Address Correction Requested.
Forwarding and Address Correction Requested.
Do Not Forward.
Forwarding and Return Postage Guaranteed.
Forwarding and Return Postage Guaranteed. Address Correction Requested.

Exhibit 159.151c

* * * * *

1 The weighted fee is the appropriate single piece third-class rate multiplied by a factor of 2.733. The fee is used during months 1–12 when forwarding is unsuccessful and the mailpiece is returned to the sender. During months 13–18 charge this fee on mailpieces endorsed Forwarding and Return Postage Guaranteed or Forwarding and Return Postage Guaranteed, Address Correction Requested.

2 The authorized abbreviation for this endorsement is Forward & Address Correction. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

3 The authorized abbreviation for this endorsement is Do Not Forward or Return-Address Cor. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

Notes:

These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time.

When necessary, more than one line may be used to print the mailer endorsement.

The following endorsements or their variations are not authorized for third-class mail:

Forwarding and Address Corrections Requested.
Return Postage Guaranteed.

Exhibit 159.151d

* * * * *

1 The weighted fee is the appropriate single piece third-class rate multiplied by a factor of 2.733. The fee is used during months 1–12 when forwarding is unsuccessful and the mailpiece is returned to the sender. During months 13–18 charge this fee on mailpieces endorsed Forwarding and Return Postage Guaranteed or Forwarding and Return Postage Guaranteed, Address Correction Requested.

2 The authorized abbreviation for this endorsement is Forward & Address Correction. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

3 The authorized abbreviation for this endorsement is Do Not Forward or Return-Address Cor. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

Notes:

These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time.

When necessary, more than one line may be used to print the mailer endorsement.

The following endorsements or their variations are not authorized for third-class mail:

Forwarding and Address Correction Requested.
Return Postage Guaranteed.

Exhibit 159.151e

* * * * *

1 The weighted fee is the appropriate single piece third-class rate multiplied by a factor of 2.733. The fee is used during months 1—12 when forwarding is unsuccessful and the mailpiece is returned to the sender. During months 13–18 charge this fee on mailpieces endorsed Forwarding and Return Postage Guaranteed or Forwarding and Return Postage Guaranteed, Address Correction Requested.

2 The authorized abbreviation for this endorsement is Forward & Address Correction. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

3 The authorized abbreviation for this endorsement is Do Not Forward or Return-Address Cor. Abbreviations are authorized in

those limited situations where the full endorsement cannot be accommodated.

Notes:

These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time.

When necessary, more than one line may be used to print the mailer endorsement.

The following endorsements or their variations are not authorized for third-class mail:

Forwarding and Address Correction Requested.

Return Postage Guaranteed.

Exhibit 159.151f

* * * * *

1 Mailers may continue to use the endorsements "Do Not Forward" which has been changed to "Do Not Forward-Do Not Return" and the "Address Correction Requested" endorsement which will be eliminated after a period of one year. This grace period expires on December 24, 1988.

2 The authorized abbreviation for this endorsement is Forward & Address Correction. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

3 The authorized abbreviation for this endorsement is Do Not Forward or Return-Address Cor. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

4 The authorized abbreviation for this endorsement is Do Not Forward-Address Cor-Return Guar. Abbreviations are authorized in those limited situations where the full endorsement cannot be accommodated.

Notes:

These regulations apply to mail associated with a customer's change of address. Do not provide temporary change of address information at any time.

When necessary, more than one line may be used to print the mailer endorsement.

The following endorsements or their variations are not authorized for fourth-class mail:

Forwarding and Address Correction Requested

Return Postage Guaranteed.

PART 361—ADDRESSING

5. In Part 361, 361.11 is added as follows:

361.11 Ancillary Service Endorsement Requirements.

Ancillary service endorsements must be those authorized in 159.151.

PART 460—PREPARATION OF BULK RATE MAILINGS

6. In Part 460, add new part 461 as follows:

PART 461—ADDRESSING

.1 General Requirements.

The general procedures for addressing are contained in 122.

.11 Ancillary Service Endorsement requirements.

Ancillary service endorsements must be those authorized in 159.151.

PART 661—ADDRESSING

7. In Part 661, 661.11 is added as follows:

661.11 Ancillary Service Endorsement Requirements.

Ancillary service endorsements must be those authorized in 159.151.

PART 761—GENERAL REQUIREMENTS

8. In Part 761, renumber 761.11 and 761.12 as 761.13 and

761.14 and add new 761.11 and 761.12 as follows:

761.1 Addressing.

.11 General Requirements. The general procedures for addressing are contained in 122.

.12 Ancillary Service Endorsement Requirements. Ancillary service endorsements must be those authorized in 159.151.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-3956 Filed 2-24-88; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 82

National Institute for Occupational Safety and Health Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Proposed rule; extension of public comment period and corrections.

SUMMARY: On August 27, 1987, the National Institute for Occupational Safety and Health published in the **Federal Register** (52 FR 32401) a proposed rule for certification of respiratory protective devices. On October 8, 1987, additional information regarding procedures for public comment on the proposed rule was published in the **Federal Register** (52 FR 37639). Public meetings on the proposed rule were held January 20, 1988, in San Francisco, California, and January 27–28, 1988, in Washington, DC. Due to requests from the public, this Notice announces that NIOSH is extending the period for public comment on issues raised at these public meetings. The close of the comment period has been changed from February 29, 1988, to March 28, 1988.

DATES: Written comments on the proposed rule must be received at the NIOSH Docket Office before the close of business on March 28, 1988.

ADDRESSES: Comments on the proposed rule should be mailed in triplicate to Dr. Nelson A. Leidel, Docket Officer, NIOSH Docket Office, Mail Stop D-37, Building 1—Room 3120, 1600 Clifton Road NE., Atlanta, Georgia 30333. The administrative record of this rulemaking is now located at the same address and may be viewed between 8:00 am and 4:30 pm, Monday–Friday, except for Federal holidays.

The telephone number of the NIOSH Docket Office is (404) 639-3901.

FOR FURTHER INFORMATION CONTACT: Dr. Nelson Leidel, Docket Officer, National Institute for Occupational Safety and Health, Mail Stop D-37, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone (404) 639-3901.

SUPPLEMENTARY INFORMATION: The record of the informal public meetings held in January 1988 will remain open for 60 calendar days following the close of the Washington, DC meeting to allow interested persons to submit written statements or comments regarding oral presentations made at either public meeting.

The **Federal Register** Notice of October 8, 1987, stated that written comments on the proposed rule must have been received at the NIOSH Docket Office before the close of business on December 28, 1987. A substantial number of written comments were received by NIOSH in early January 1988. In order to obtain the widest range of public comment on the proposed rule, NIOSH will accept and

consider any written comments on the proposed rule received before close of business on March 28, 1988. Thus the original comment period of two months announced on August 27, 1987 (52 FR 32401) has been extended to a total of seven months.

The administrative record of this rulemaking will consist of the August 28, 1987, Notice of Proposed Rulemaking, all other relevant **Federal Register** notices, agency records on this subject, all written submissions made in response to the Notices and received at the NIOSH Docket Office between August 27, 1987, and March 28, 1988, and the record of the informal public meetings. The record of the informal public meetings will consist of the meeting schedules, transcripts made by NIOSH of the oral comments at the meetings, any written comments submitted by presenters at the meetings, and statements or comments regarding oral presentations made at either public meeting submitted by interested persons within 60 days following the close of the Washington public meeting. No written submission, or any portion thereof, made in response to this Notice will be received or held in confidence.

The administration record of the rulemaking will be made available for viewing and copying in the NIOSH Docket Office. All requests for any portion of the administrative record including transcripts from the public meetings must be submitted in writing.

To facilitate computer entry of written comments into the administrative record, parties are encouraged, but not required, to submit all written comments in a format meeting the following guidelines: each of the three copies should be on paper measuring 8½-inch by 11-inch paper; with double-spaced text having top, bottom, and side margins of at least 1-inch width; and typed with a Courier 10, Courier 12, Courier 72, Elite 12, Letter Gothic, Prestige Pica 10, or Prestige Elite 12 typeface.

All interested persons are encouraged to submit written comments to assure receipt at the NIOSH Docket Office on or before the close of business March 28, 1988.

Dated: February 19, 1988.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 88-3954 Filed 2-24-88; 8:45 am]

BILLING CODE 4160-19-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[Gen. Docket No. 88-37; FCC 88-29]

Amendment Rules Concerning Ship Radio Officer Qualifying Service Endorsements

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The amended rules would simplify both the substantive requirements and the documentation necessary for issuance of six months service endorsements to radio officers. Radio officers are required to have such an endorsement to serve as the sole radiotelegraph operator on board certain large ocean-going ships.

DATES: Comments must be received on or before April 8, 1988, and reply comments must be received on or before April 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert H. McNamara, Radio Bureau, Washington, DC 20554, (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making (NPRM)* adopted January 27, 1988, and released February 17, 1988.

1. The full text of this Commission document and the amended rules are available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the *NPRM* and the proposed amendments may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

2. These proposed rule amendments are in response to several inquiries and complaints concerning the criteria used to determine a radio officer's eligibility for a six months service endorsement. A cargo ship equipped with an auto alarm is permitted to carry a single radio officer who has at least six months previous service as a radio officer on board a United States ship. Generally, the complaints result because the applicants have more than six months sea duty, but have not had the requisite U.S. Coast Guard (USCG) radio officer certificate or have not met the currently required 1440 hours of radiotelegraph station operating time.

3. The *NPRM* proposes to simplify the requirements and documentation needed to determine qualifying service while adhering to the letter and intent of the Communications Act. These changes would recognize new technologies and practices that improve safety and maritime communications. The proposed Rules allow time spent on board a ship performing maintenance duties, training, operating radiotelephone stations and time in port during normal ship operations to be included within the six months service period. Additionally, experience onboard U.S. Government ships would qualify for the six months service endorsement. The *NPRM* also proposes to allow vessel owners, operators, captains, and masters to certify that the applicant has successfully completed the six months qualifying service requirements. Further, the definition of "radio officer" is proposed to be changed to be consistent with the Communications Act.

4. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 605(b)), does not apply to these proposed Rules because, if promulgated, these Rules will not have a significant economic impact on a substantial number of small entities. The proposed Rules would relax the six months qualifying service certification procedures applicable to radiotelegraph operators seeking to serve as radio officers on large ocean-going ships. Since 1982 the Commission has issued 50 six months endorsements.

5. The rule amendments proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection the Commission imposes on the public. The proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

6. The authority for this action is contained in 47 U.S.C. 154(i) and 303 (l) and (r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments and reply comments by the dates indicated in the Preamble to this document. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal

copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

7. A copy of this *NPRM* will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 13

Commercial radio operators.

47 CFR Part 80

Maritime radio services.

Rule Changes

Parts 13 and 80 of Chapter 1 of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

A.

PART 13—COMMERCIAL RADIO OPERATORS

1. The authority citation for Part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. In § 13.12, paragraph (b)(2) is revised and paragraph (b)(3) introductory text is amended by adding the following at the beginning of the paragraph:

§ 13.12 Additional requirements for first class radiotelegraph operator's certificate and six months service endorsement.

* * * * *

(b) * * *

* * * * *

(2) To qualify for the six months service endorsement the applicant must show that:

(i) The applicant was employed as a radio operator on board a ship or ships of the United States for a period totaling at least six months;

(ii) The ship(s) was equipped with a radio station complying with provisions of part II of Title III of the Communications Act, or the ship(s) was owned and operated by the U.S. Government, for example the U.S. Navy or U.S. Coast Guard, and equipped with a radio station;

(iii) The ship(s) was in service during the applicable six month period; however, any portion of single in-port periods that exceed seven days must be excluded from the qualifying six month periods;

(iv) The applicant held a first or second class radiotelegraph operator's certificate issued by the FCC during this entire six month qualifying period; and

(v) The applicant holds a radio officer's license issued by the U.S. Coast Guard at the time the six month service endorsement is requested.

(3) To satisfy the showing required in paragraph (b)(2) of the section, the applicant must submit a document(s) signed by the ship station licensee (owner/operator), master or commmanding officer of a U.S. ship(s) stating that the applicant performed the duties of a radio operator in a satisfactory manner under each of the conditions listed in paragraph (b)(2) of this section. * * *

* * * * *

B.

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read a follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.SC. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted:

2. Section 80.157 is revised to read as follows:

§ 80.157 Radio officer defined.

A "radio officer" means a person holding a first or second class radiotelegraph operator's certificate issued by the Commission who is employed to operate a ship radio station in compliance with Part II of Title III of the Communications Act. Such a person is also required to be licensed as a "radio officer" by the U.S. Coast Guard when employed to operate a ship radio*telegraph* station.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–3857 Filed 2–24–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–65, RM–6188]

Radio Broadcasting Services; East Hemet and Indio, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comments on a petition by Claridge Broadcasting Corp. requesting the substitution of Channel 225B for Channel 224A at Indio, CA, and modification of its license for Station KCMJ–FM accordingly, to provide that community with its first wide coverage area FM service. In order to accommodate its proposal, petitioner requests the deletion of Channel 225A from East Hemet, CA, on the basis of its alleged lack of community status.

DATES: Comments must be filed on or before April 11, 1988, and reply comments on or before April 26, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follow: Robert L. Olender, Esq., Baraff, Koerner, Olender and Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036–3355.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–65, adopted January 29, 1988, and released February 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–3971 Filed 2–24–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking by General Motors Corp. (GM) for an amendment to Safety Standard No. 108 to make optional the keyways presently required for aftermarket Type HB3 and HB4 replaceable light sources for headlamps, and to modify dimension specifications of the electrical connector area of the bulb. The agency has concluded that, under GM's petition, two types of aftermarket HB3 and HB4 light sources would result which would not be interchangeable with each other, and that no good cause has been shown to modify specifications for the electrical connector-bulb interface.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA, 400 7th Street SW., Washington, DC 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION: General Motors Corporation (GM) has petitioned the agency for two amendments to Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* to modify the specifications for Type HB3 and Type HB4 replaceable light sources used in headlamps.

Figures 19 and 20 of Standard No. 108 contain the dimensional specifications for, respectively, the Type HB3 and Type HB4 standardized replaceable light sources. Part of these specifications is a "keyway", an indexing device intended to facilitate the proper seating of the light source in a headlamp. The keyway (and associated key in the lamp assembly) is optional for original equipment light sources, but is required for light sources produced for the aftermarket. GM asked that the keyway be made optional for aftermarket light sources, claiming that such a change would not affect the interchanegability or performance of the light sources in the aftermarket.

The agency disagrees. If headlamp assemblies have been produced with keys, an aftermarket bulb without a keyway will not fit in the assembly. Under GM's request, two physically different types of aftermarket HB3 and HB4 light sources would exist simultaneously and would not be interchangeable. Interchangeability of the same Types of light sources is essential for standardization, and facilitation of replacement. The agency therefore denies GM's petition for rulemaking on this issue.

GM also requested a specification change involving a clarification in the location of dimension lines and a reduction in tolerances to remove potential interferences between the mating surfaces of the bulb and its electrical connector. The agency carefully reviewed Figures 19 and 20 and concluded that the dimensions for the electrical connector fit are correctly specified parallel to the centerline of the connector. Furthemore, a tolerance of +/− .010 inch applies to the dimension of the opening where the electrical connector inserts into the bulb. The connector design must allow for the +/− .010 inch tolerance in the cavity where the electrical connector inserts into the bulb. GM does not disageee but apparently experienced a problem with a supplier who applied a taper to this area of the bulb. The agency has concluded that this was a design/manufacturing error, and not related to the Figures. In addition, the electrical connector is not specified by Standard No. 108, and may be designed by the manufacturer to avoid any problem of fit. No compelling reason has been shown to change the standard, and NHTSA denies GM's petition on this point as well.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 719 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 18, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–4002 Filed 2–24–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Boltonia decurrens (Decurrent false aster) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Boltonia decurrens* (Decurrent false aster), a wet prairie perennial, as a threatened species under the authority of the Endangered Species Act of 1973, as amended. Twelve populations are known to be extent in five Illinois counties, and two populations, one of which is divided into two subpopulations, are known in one Missouri county. The plant is believed extirpated from 13 other counties in Illinois and three counties in Missouri. It is threatened by destruction and modification of the floodplain forest along the Illinois and Mississippi rivers due to wetland drainage and agricultural expansion. Because of extensive row crop cultivation within the watersheds of these rivers, habitat of the decurrent false aster is continually being modified or destroyed by heavy siltation. This proposed rule, if made final, will extend the Act's protection to *Boltonia decurrens*. Critical habitat is not proposed for this plant. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be recieved by April 25, 1988. Public hearing requests must be received by April 11, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Division, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cites, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** section) at 612/725–3276 or FRS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

Boltonia decurrens, a member of the Aster family was recognized as a distinct species by Schwegman and Nyboer (1985). However, the taxon has gone be many names in the past. Torrey and Gray (1841) first described it as *Boltonia glastifolia* L'Her. beta *decurrens*. Subsequently, Wood (1869) described it as *Boltonia decurrens*; Engleman (1884) as *B. asteroides* (L.) L'Her. var. *decurrens*; and Fernald and Griscom (1940) considered it *B. latiquama* var. *decurrens*. According to Schwegman and Nyboer (1985), most taxonomists considered the one distinctive feature of the taxon to be leaf bases that are decurrent down the stem. However, Fernald and Griscom (1940) attached more significance to the underground parts and qualified their

treatment of *Boltonia latisquama* var. *decurrens* pending further analysis of the underground parts of *Boltonia*. Thus, Schwegman and Nyboer (1985) undertook a comprehensive study of the roots and rhizomes of *Boltonia asteroides* var. *recognita* and *Boltonia decurrens* and concluded that *B. decurrens* is clearly separated from *B. asteroides* var. *recognita* by its decurrent leaves and the lack of long white creeping rhizomes. Schwegman and Nyboer (1985) observed that where *Boltonia decurrens* and *Boltonia asteroides* var. *recognita* were found growing together, the former never had rhizomes, and the latter always produced them.

Boltonia decurrens, a perennial, reproduces both vegetatively, by producing basal shoots, and sexually. It will grow to a height of 1.5 meters (59 inches), sometimes reaching heights of more than two meters (79 in.). It is characterized by conspicuous decurrent leaves that are linear to lanceolate, about 5–15 cm (2–6 in.) long and 5–20 mm (.2–.8 in.) wide. The lower leaves are generally broader and longer. The inflorescence is branched and somewhat leafy with several aster-like heads with yellow disks 7–14 mm (.3–.6 in.) wide. The rays are white to purple (more frequently purple or violet than white) and 1–1.8 cm (.4–.7 in.) long. Aster-like flower heads about the size of a quarter-dollar appear on the tall bushy plants from July to October.

Boltonia decurrens was first collected by Dr. Short about 1841 in habitat described as "wet prairies of Illinois". Subsequent investigators, Morgan (1980), Kurz (1981), and Schwegman and Nyboer (1985) list habitat as disturbed alluvial ground and open muddy shore of the floodplain forest along the Mississippi and Illinois rivers. historically, *B. decurrens* has been known from this type of habitat along a 400-km (250-mile) stretch of river floodplain from LaSalle, Illinois, on the Illinois River, downstream to St. Louis, Missouri, on the Mississippi River. An outlying record, reported in 1976 but not relocated since, is known from Cape Girardeau, Missouri, about 195 km (120 miles) down the Mississippi River from St. Louis (Schwegman and Nyboer 1985). It is thought to be extirpated from thirteen counties in Illinois.

Extensive surveys for the plant were conducted from 1980 to 1985 by Schwegman and Nyboer (1985). These surveys located a total of 13 populations in Illinois. Schwegman (pers. comm.) reports a 1986 total of 12 populations in Illinois; three previously known populations having disappeared (two were plowed up and one succumbed to forest succession), but two new populations were discovered. These 12 Illinois populations are located along the Illinois River in Morgan, Schuyler, Fulton, and Marshall counties, and one along the Mississippi River in St. Clair County. In addition, two populations are presently known from St. Louis County, Missouri (S. Morgan, Missouri Department of Conservation, pers. comm., and B. Stebbins, Fish and Wildlife Service, pers. comm.).

Schwegman and Nyboer (1985) report that the extant populations in Illinois are found in disturbed alluvial soil habitats such as old agricultural fields, roadsides, and disturbed lake shores. The plant is found in similar habitat (disturbed areas) in Missouri (J.H. Wilson, Missouri Department of Conservation, pers. comm.).

Kurz (1981) identifies associated open forest species of *Boltonia decurrens* to include *Acer saccharinum, Populus deltoides, Platanus occidentalis, Betula nigra, Salix nigra,* and *Acer negundo.* Herbaceous associates are *Polygonum pensylvanicum, Leersia oryzoides, Xanthium strumarium,* and *Bidens aristosa.* Because of frequent flooding, both the overstory and understory are often open.

Boltonia asteroides was first recommended for Federal listing as a threatened species by the Smithsonian Institution in its December 15, 1974, report to Congress, "Report on Endangered and Threatened Plant Species of the United States." On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition acceptance is now governed by section 4(b)(3) of the Act). On December 15, 1980, the Service published a revised notice of review for native plants (45 FR 82480). *Boltonia asteroides* var. *decurrens* was included in that notice as a category 2 species.

Category 2 species are those for which the Service believes additional data must be obtained before a proposal to list is warranted. On September 27, 1985 (50 FR 39526), the Service again published a revised notice for native plants in the **Federal Register**; *Boltonia asteroides* var. *decurrens* was included in that notice as a category 2 species. The treatment of *Boltonia decurrens* by Schwegman and Nyboer in 1985, and status information received since the September 27, 1985 (50 FR 39525), notice indicates that proposing to list *Boltonia decurrens* as a threatened species is warranted.

The Endangered Species Act Amentments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on those petitions, including the one for *B. decurrens*, was October 13, 1983. On October 13, 1983; October 12 1984; October 11, 1985; October 10, 1986; and again on October 13, 1987; the petition finding was made that listing *B. decurrens* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. This proposed rule constitutes the final finding on the petitioned action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Boltonia decurrens* (Torr. & Gray) Wood are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Boltonia decurrens is threatened by the elimination and modification of its floodplain habitat. Schwegman and Nyboer (1985) attribute this to the elimination of wet prairies and marshes for agricultural development. As a result of the increased agricultural activities, flooding schemes have changed and siltation has increased. Schwegman and Nyboer (1985) also cite extensive rowcrop agricultural practices and numerous levee systems that increase the amount of silt deposited on river banks during floods, and contribute to the problem. The increased amount of siltation is considered to be the main factor in the reduction of *Boltonia decurrens*. Schwegman (Ambrose 1986) explains that the plant prefers moist, sandy areas, normally found around natural lakes in the Illinois River floodplain, however, these areas now receive two to three inches of silt per year, preventing seed germination. Before the river carried so much silt, the sandier shores of lakes and streams were suitable for seed germination and maintenance of this species. Schwegman (Ambrose 1986) expects that the only

remaining populations of *Boltonia decurrens* occur in areas where agricultural practices maintain proper conditions for seed germination. Without this manipulation, and in the absence of silt-free flooding, the species is not self sustaining. Effects of flooding on the distribution of *Boltonia decurrens* are not well understood. Research is needed to provide a better understanding of the plant's survival capabilities. Kurz (1981) believes that siltations is apparently more severe now than in pre-settlement times. Increased use of herbicides may also have potential detrimental affects, but more study is needed.

Four of the 14 known extant populations of *B. decurrens* occur on public lands; three on Illinois State lands and one on Army Corps of Engineers lands in St. Charles County, Missouri. Management plans are being developed for the *Boltonia decurrens* populations found on Illinois State lands. The Corps of Engineers may soon enter into a Cooperative management agreement with the Missouri Department of Conservation on one of the areas in St. Charles County, Missouri. Soil manipulation on selected sites within these areas will help us to better understand reproductive requirements of this taxon. Over 70 percent of the known populations of *Boltonia decurrens* are found on private lands and receive no protection or management consideration.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites.

C. Disease or Predation

None known that affects this taxon.

D. The Inadequacy of Existing Regulatory Mechanisms

Boltonia decurrens is not presently recognized by the State of Illinois as being endangered or threatened, however it is currently under review for addition to the State's threatened list. The plant is listed as endangered by Missouri, where State regulations prohibit exportation, transportation, or sale of plants on the State or Federal lists. Collecting, digging, or picking any rare or endangered plant without permission of the property owner is also prohibited. While approximately 20 percent of the known populations of *Boltonia decurrens* are located upon land owned by the State of Illinois and receive some form of protection, a majority of the known populations are, as yet, unprotected. One of the populations in Missouri is found on land administered by the Corps of Engineers. Although plants are found on public lands, there is no guarantee of protection without specific management plans for *Boltonia decurrens*. The Endangered Species Act offers possibilities for additional protection of this taxon through section 6 cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements. The Endangered Species Act would afford additional protection to *Boltonia decurrens*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Because *Boltonia decurrens* seems to thrive in disturbed areas, the inadvertent destruction of plants in the course of normal agricultural activities will continue to plague the species' survival (Schwegman and Nyboer 1985). According to Schwegman (Ambrose 1986), the threat of a severe flood such as the one in 1981 that inundated the Illinois floodplain and deposited large amounts of silt still exists. For several years after that flood it was feared that *B. decurrens* was gone forever. In Illinois, the taxon is only known from disturbed habitat. Nearly all the known populations are found in habitat kept open by occasional cropping. Research is needed to better understand the amount of disturbance and habitat alteration the plant can tolerate.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Over 70 percent of the 14 known populations are on privately owned property and receive no protection or management designed to enhance the species' continued existence.

Based on this evaluation, the preferred action is to list *B. decurrens* as threatened, as opposed to endangered, because the species is not in danger of immediate extinction, but does have a restricted range and is confronted by a number of problems. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service believes that designation of critical habitat for *Boltonia decurrens* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of detailed critical habitat maps.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land aquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are intitiated by the Service following listing. Some may be undertaken prior to listing, cicumstances permitting. Potential habitat management actions that might benefit *Boltonia decurrens* include: developing and implementing protection plans for publicly owned areas; establishing a monitoring system; censusing all known populations; and establishing controlled till plots to monitor seedling emergence after cultivation. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or aderse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destory or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. The U.S. Army Corp of Engineers has jurisdiction over one of the *Boltonia decurrens* populations in St. Charles county, Missouri.

The Act and its implementing regulations found at 50 CFR 17.71 and

17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Boltonia decurrens*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 would apply. These prohibitions, in part, make it illegal for any person subjet to the jurisdiction of the United States to import or export, transport in interestate of foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Boltonia decurrens* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, P.O. Box 27329, U.S. Fish and Wildlife Service, Washington, DC 20038–7329 (202/343–4955).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered and threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this rule, are hereby solicited. Comments particularly are sought concerning:

(1) Bioligical, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Boltonia decurrens;*

(2) The location of any additional populations of *Boltonia decurrens* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Boltonia decurrens.*

Final promulgation of a regulation on *Boltonia decurrens* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ambrose, D. 1986. Rare flowers such as these. Outdoor Highlights. Illinois Department of Conservation. 14(8):6–9.

Englemann, G. 1884. *in* Gray, A synoptical flora of North America 1(2):166.

Fernald, M. and L. Griscom. 1940. A century of additions to the flora of Virginia. Rhodora 42:355–416, 419–482, 503–521.

Kurz, D.R. 1981. Status report on *Boltonia asteroides* var. *decurrens* in Illinois. Unpublished report, 9 pp.

Morgan, S.W. 1980. Status report on *Boltonia asteroides* var. *decurrens* in Missouri. Unpublished report, 13 pp.

Schwegman, J.E. and R.W. Nyboer. 1985. The taxonomic and population status of *Boltonia decurrens.* Castanea 50 (2):112–115.

Schwegman, J.E. 1984. 1984 status report on *Boltonia decurrens* in Illinois. Unpublished report, 4 pp.

Torrey, J. and A. Gray. 1841. Flora of North America. 2:188. Wood, A. 1869. Class-Book of Botany. p. 430.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetic order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	*	*	*	*		
Boltonia decurrens	Decurrent false aster	U.S.A. (IL,MO)	T		NA	NA
*	*	*	*	*		

Dated: January 13, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-3949 Filed 2-24-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 37
Thursday, February 25, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita, AR

AGENCY: Forest Service, USDA.

ACTION: Notice of joint interchange of lands.

SUMMARY: On February 13, 1987, and March 4, 1987, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 11,796.33 acres, more or less, from the Department of Agriculture to the Department of The Army and 27,456.24 acres, more or less, from the Department of The Army to the Department of Agriculture within and adjacent to the Ouachita National Forest, Arkansas. A copy of the Joint Order, as signed, appears at the end of this notice.

EFFECTIVE DATE: The order is effective February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Lands Staff, Room 1010–RP–E, Forest Service USDA, P.O. Box 96090, Washington, DC 20013–6090, Telephone: (703) 235–2406.

George M. Leonard,
Associate Chief.

February 11, 1988.

Department of Agriculture

Department of the Army

Lake Ouachita, Arkansas

Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

By virtue of the authority vested in the Secretary of the Army and the Secretary of Agriculture by the Act of July 26, 1956, (70 Stat. 656; 16 U.S.C. 505a, 505b) it is ordered as follows:

(1) The lands described in Exhibit A and Part 3 and Exhibit B, attached hereto and made a part hereof, which lie within and adjacent to the Ouachita National Forest, Montgomery and Garland Counties, Arkansas, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture.

(2) The lands described in Part 1 and 2 of Exhibit B, attached hereto and made a part hereof, which lie within and adjacent to the Lake Ouachita Reservoir Project, Arkansas, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army.

(3) Pursuant to Section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Ouachita Reservoir Project, Arkansas. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereafter subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the **Federal Register**.

John O. Marsh, Jr.,
Secretary of the Army.

Dated: February 13, 1987.

Richard E. Lyng,
Secretary of Agriculture.

Dated: March 4, 1987.

Exhibit A—Lands Transferred From the Secretary of the Army to the Secretary of Agriculture

Lands acquired by the U.S. Army Corps of Engineers for Blakely Dam-Lake Ouachita, as follows:

That portion of the following described lands lying above the 610 feet elevation National Geodetic Vertical Datum (N.G.V.D.), except as otherwise noted, and being more particularly described as follows:

Township 1 North, Range 22 West (Garland County, Arkansas)

Section 31

NW¼SE¼SE¼, N½SW¼SE¼SE¼, SW¼SE¼, Part of the SE¼SW¼ and being more particularly described as: Beginning at the southeast corner of the SW¼ of Section 31, run thence with the south boundary of Section 31, S 89°54'W, 1,327 feet, to the southwest corner of the said SE¼SW¼; run thence N 44°31'E, 1,880 feet, to the northeast corner of the said SE¼SW¼; run thence with the east boundary of the said SE¼SW¼, S 00°47'E, 1,351 feet, to the point of beginning; NE¼SW¼, Part of the SE¼ SW¼ and being more particularly described as: Beginning at the northwest corner of the SE¼SW¼, run thence with the north boundary of the SE¼SW¼, N89°50'E, 1,330 feet, to the northeast corner of the SE¼SW¼; run thence S 44°35'W, 495 feet; thence S 89°50'W, 990 feet, to a point located on the west boundary of the SE¼SW¼; run thence with the said west boundary, N 01°00'W, 335 feet, to the point of beginning.

All above 610 feet elevation N.G.V.D. containing 19.1 acres, more or less.

Section 32

SW¼NW¼SW¼, W½SW¼SW¼, SW¼ SE¼SW¼, NW¼SE¼SE¼SW¼, W½ NE¼SE¼SW¼, NE¼NE¼SE¼SW¼, SW¼SE¼

All above 610 feet elevation N.G.V.D., containing 20.7 acres, more or less.

Township 1 South, Range 20 West (Garland County, Arkansas)

Section 6

Part of the N½NE¼ and being more particularly described as: Beginning at a point located on the north boundary of Section 6, said point of beginning located in the center of Moccasin Branch and from which point the northeast corner of Section 6 bears S 89°50'E, 905 feet distant, run thence with the meanders of the center of Moccasin Branch in a general southerly direction in the irregular NE¼NE¼ of Section 6 a distance of 1,460 feet, more or less; run thence N 78°45'E, 825 feet, to a point located on the east boundary of Section 6; run thence with the said east boundary, S 00°05'E, 620 feet to a point located on the south boundary of the irregular N½NE¼; run thence with the said south boundary, N 89°40'W, 1,650 feet; thence North, 1,950 feet, to a point located on the north boundary of Section 6; run thence with the said north boundary, S 89°50'E, 735 feet, to the point of beginning; E½N½S½W½NW¼, S½ S½W½NW¼, SE¼NW¼, S½NE¼, N½ SW¼

All above 610 feet elevation N.G.V.D., containing 151.2 acres, more or less.

Section 7

NW¼ SW¼,SE¼NE¼SE¼, S½S½

All above 610 feet elevation N.G.V.D., and containing 83.5 acres, more or less.

Section 8

Part of the W½SW¼ and being more particularly described as: Commencing at the southwest corner of said Section 8; run thence along the west boundary of said Section, N 00°05'E, 825 feet, more or less, to the point of beginning; thence continuing along said west boundary, N 00°05'E, 1,378 feet; run thence S 89°55'E, 1,250 feet, to a point located on the east boundary of the W½SW¼; run thence with the said east boundary, S 00°10'W, 1,385 feet; run thence N89°38'W, 1,250 feet, to the point of beginning.

All above 610 feet elevation N.G.V.D., containing 13.3 acres, more or less.

Section 18

NW¼, N½NE¼, NW¼SW¼

All above 610 feet elevation N.G.V.D., containing 106.5 acres, more or less.

Section 19

S½NE¼SW¼, SE¼SW¼

All above 610 feet elevation N.G.V.D., containing 33.4 acres, more or less.

Section 20

NE¼NE¼NW¼SW¼, SE¼NW¼NW¼SW¼, SW¼NE¼NW¼SW¼, E½SW¼SW¼NW¼SW¼, E½SW¼NW¼SW¼, NW¼SE¼NW¼SW¼, E½W½NW¼SW¼SW¼, E½NW¼SW¼SW¼, SW¼SW¼SW¼

All above 610 feet elevation N.G.V.D., containing 13.4 acres, more or less.

Section 29

S½SW¼, W½SW¼SE¼

All above 610 feet elevation N.G.V.D., containing 45.3 acres, more or less.

Section 30

NE¼NW¼, N½SW¼NW¼, S½NW¼NE¼, N½NE¼NE¼, SE¼SE¼NE¼SE¼, NE¼SE¼SE¼

All above 610 feet elevation N.G.V.D., containing 47.6 acres, more or less.

Section 31

W½NW¼, N½SE¼NW¼, W½SE¼SE¼NW¼, NW¼SW¼NE¼,W½W½NE¼SW¼NE¼

All above 610 feet elevation N.G.V.D., containing 18.1 acres, more or less.

Section 32

N½NW¼NW¼

All above 610 feet elevation N.G.V.D., containing 10.7 acres, more or less.

Township 1 South, Range 21 West (Garland County, Arkansas)

Section 1

SE¼SW¼, N½SE¼,SW¼SE¼,NW¼SE¼SE¼

All above 610 feet elevation N.G.V.D., containing 66.8 acres more or less.

Section 2

Part of the NW¼ and being more particularly described as: Commencing at the northeast corner of the NW¼NW¼ of Section 2, run thence with the east boundary of the said NW¼NW¼, S 00°52'W, 490 feet, more or less, to a point located in the center of Blocker Creek for the point of beginning, thence continuing along said east boundary south, 811 feet; thence S 88°15'E, 209 feet; thence S 00°52'W, 417 feet, to a point located on the north boundary of the SE¼NW¼, run thence with the said north boundary, S 88°15'E, 440 feet; thence S 00°30'W, 1,175 feet; thence N 87°40'W, 650 feet, to a point located on the east boundary of the SW¼NW¼; run thence with the last mentioned east boundary, S 00°52'W, 165 feet to the southeast corner of the SW¼NW¼; run thence with the south boundary of the SW¼NW¼, N 87°40'W, 125 feet, to a point located in the center of Blocker Creek; run thence with the center of the said creek in a northerly direction a distance of 2,690 feet, more or less, to the point of beginning; Part NE¼SW¼ and the SE¼NW¼ and being all that portion of the following described tract of land lying east of the Blocker Creek: Beginning at the southwest corner of the said NE¼SW¼, run thence with the west boundary of the E½W½ of Section 2, N 00°52'E, 1,485 feet; thence S 87°40'E, 1,305 feet, to a point located on the east boundary of the W½ of Section 2; run thence with the said east boundary, S 00°30'W, 1,443 feet more or less, to the southeast corner of the NE¼SW¼, thence with the south boundary of the NE¼SW¼, N 88°35'W, 1,310 feet more or less, to the point of beginning; W½NW¼SE¼, SE¼SW¼SW¼, N½SW¼SE¼SW¼, W½NE¼SE¼SW¼

All above 610 elevation N.G.V.D., containing 48.2 acres, more or less.

Section 7

E½SE¼NE¼, E½E½W½SE¼NE¼, E½NE¼SE¼, E½E½W½NE¼SE¼, SW¼NW¼SE¼, W½SW¼SE¼, Part N½NE¼SW¼ more particularly described as: Beginning at the northwest corner of NE¼SW¼, run thence southeasterly 1,500 feet, more or less, to the southeast corner of the N½NE¼SW¼, thence run west along the south line of said N½NE¼SW¼, 1,320 feet, more or less, to the southwest corner of the N½NE¼SW¼, thence run north along the west line of the NE¼SW¼, 660 feet, more or less, to the point of beginning; SE¼SE¼SW¼

All above 610 feet elevation N.G.V.D., containing 56.5 acres, more or less.

Section 8

Part NW¼NE¼ more particularly described as: Beginning at the southwest corner of the NW¼NE¼, run thence with the west boundary of the NW¼NE¼, N 00°30'E, 535 feet; thence S 88°15'E, 760 feet, to a point located in the center of Cedar Creek; run thence with the center of Cedar Creek in a southerly direction a distance of 550 feet, more or less, to a point located on the south boundary of the said NW¼NE¼;run thence with the said south boundary, N 88°15'W, 820 feet, to the point of beginning; W½SW¼NE¼, W½NW¼SE¼, NW¼SW¼SE¼, SW¼SE¼NW¼, NW¼SW¼, north 1,660 feet of E½SW¼

All above 610 feet elevation N.G.V.D., containing 103.7 acres, more or less.

Section 10

SW¼NE¼, SE¼SE¼NW¼, N½SE¼NW¼, SE¼SE¼

All above 610 feet elevation N.G.V.D., containing 32.8 acres, more or less.

Section 11

S½NE¼, NW¼NE¼, S½NW¼, NE¼NW¼, SW¼, N½NW¼SE¼, SW¼NW¼SE¼, NW¼SE¼NW¼SE¼

All above 610 feet elevation N.G.V.D., containing 204.1 acres, more or less.

Section 12

NE¼NW¼, NW¼NE¼

All above 610 feet elevation N.G.V.D., containing 38.6 acres, more or less.

Section 13

N½NE¼NE¼, W½SE¼, NE¼SE¼, S½SW¼

All above 610 feet elevation N.G.V.D., containing 51.1 acres, more or less.

Section 14

N½SE¼, N½NE¼NW¼

All above 610 feet elevation N.G.V.D., containing 17.5 acres, more or less.

Section 15

NW¼NE¼, N½SW¼NE¼, NE¼SE¼, N½NW¼SE¼SE¼, SW¼SE¼, SE¼SW¼, S½S½NE¼SW¼

All above 610 feet elevation N.G.V.D., containing 45.7 acres, more or less.

Section 16

N½SE¼SE¼NE¼, SW¼SE¼NE¼, W½NE¼SE¼, SE¼NE¼SE¼, SE¼SE¼, E½SW¼SE¼, SW¼SW¼SE¼, SE¼SE¼SW¼

All above 610 feet elevation N.G.V.D., containing 46.2 acres, more or less.

Section 17

S½NW¼SE¼, N½SW¼SE¼, S½SW¼

All above 610 feet elevation N.G.V.D., containing 43.7 acres, more or less.

Section 18

S½NE¼NE¼, E½E½SE¼NE¼, S½SW¼NE¼, NW¼SW¼NE¼, NW¼NW¼NE¼, E½NE¼NW¼, SE¼, S½N½NE¼SW¼, S½NE¼SW¼, SE¼SW¼, E½E½SW¼SW¼, W½SW¼SW¼

All above 610 feet elevation N.G.V.D., containing 112.6 acres, more or less.

Section 19

SE¼SE¼NE¼NE¼, N½SE¼NE¼, W½NE¼SW¼, E½W½SW¼

All above 610 feet elevation N.G.V.D., containing 17.0 acres, more or less.

Section 20

W½NE¼, S½NW¼, NW¼NW¼

All above 610 feet elevation N.G.V.D., containing 125.6 acres, more or less.

Section 21

NE¼NE¼, N½SE¼, N½S½SE¼

All above 610 feet elevation N.G.V.D., containing 83.9 acres, more or less.

Section 22

W½W½NW¼SW¼
All above 610 feet elevation N.G.V.D., containing 0.8 acre more or less.

Section 23

N½NE¼
All above 610 feet elevation N.G.V.D., containing 9.9 acres, more or less.

Section 24

NW¼NW¼,N½NE¼NW¼,SW¼SW¼ SE¼
All above 610 feet elevation N.G.V.D., containing 39.1 acres, more or less.

Section 25

N½N½NE¼SW¼
All above 610 feet elevation N.G.V.D., containing 0.9 acre, more or less.

Section 27

NW¼SE¼, N½SW¼, SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 27.8 acres, more or less.

Section 28

E½E½SE¼NE¼, NW¼NW¼SW¼NW¼
All above 610 feet elevation N.G.V.D., containing 1.9 acres, more or less.

Section 29

SE¼NE¼,N½N½SW¼
All above 610 feet elevation N.G.V.D., containing 14.2 acres, more or less.

Section 30

North 33 feet of the NW¼NE¼, E½NW¼, SE¼NW¼NW¼, N½NE¼SW¼NW¼, N½NW¼SE¼, N½NE¼SW¼
All above 610 feet elevation N.G.V.D., containing 41.1 acres, more or less.

Section 34

N½NE¼, NE¼NW¼, N½S½NW¼
All above 610 feet elevation N.G.V.D., containing 85.4 acres, more or less.

Section 35

NW¼NW¼NW¼, S½S½
All above 610 feet elevation N.G.V.D., containing 67.5 acres, more or less.

Section 36

SE¼SE¼NE¼, S½SW¼
All above 610 feet elevation N.G.V.D., containing 19.9 acres, more or less.

Township 1 South, Range 22 West (Garland County, Arkansas)

Section 2

SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 28.6 acres, more or less.

Section 3

E½NE¼NE¼,SE¼NE¼,E½SE¼,E½SW¼ NE¼, North 1,138 feet of the E½NW¼ SE¼, Part SW¼SE¼ more particularly described as: Beginning at the southeast corner of the SW¼SE¼, run thence with the south boundary of Section 3, West, 1,270 feet, to a point located on the divisional or property line between Vell Merideth and the Dailey Cemetery; run thence with the said divisional or property line as follows: N 23°03'E, 46 feet, thence N 67°42'W, 92 feet, to a point located on the west boundary of the SW¼SE¼; run thence with the said west boundary, North, 722 feet; thence N 89°08'E, 1,340 feet, to a point located on the east boundary of the SW¼SE¼, run thence with the said east boundary, South, 812 feet, to the point of beginning; S½S½N½SE¼SW¼, S½SE¼SW¼, LESS AND EXCEPT: Beginning at the southeast corner SE¼SW¼, run thence along the east boundary of the SW¼, N 01°05'E, 90 feet, thence N 67°42'E, 40 feet, thence S 13°08'E, 100 feet, more or less, to a point on the south line of Section 3, thence along the said south line, East, 60 feet, more or less to the point of beginning, S½S½SW¼SW¼, S½N½ SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 85.8 acres, more or less.

Section 4

N½NW¼,SE¼NW¼,W½SW¼,W½NE¼ NE¼SW¼,SE¼NE¼NE¼SW¼,S½ NE¼SW¼,SE¼SW¼,S½NW¼NW¼ SE¼;Part SE¼NW¼SE¼ more particularly described as: Beginning at a point from which the southeast corner of the NW¼SE¼ bears S 61°34'E, 369 feet distant, thence N 89°38'W, 330 feet, thence along the west boundary of the SE¼NW¼SE¼, N 00°45'E, 330 feet, thence S 89°38'E, 330 feet, thence S 00°45'W, 330 feet, to the point of beginning; SW¼NW¼SE¼,S½SW¼ SE¼
All above 610 feet elevation N.G.V.D., containing 95.4 acres, more or less.

Section 5

NW¼NE¼, W½NE¼NE¼, NW¼SW¼ NW¼, S½S½SE¼SE¼
All above 610 feet elevation N.G.V.D., containing 20.5 acres, more or less.

Section 6

The South 180 feet of even width of the fractional E½E½N½NE¼,NE¼SE¼ NE¼
All above 610 feet elevation N.G.V.D., containing 4.4 acres, more or less.

Section 7

E½SE¼,S½NE¼
All above 610 feet elevation N.G.V.D., containing 37.8 acres, more or less.

Section 8

S½NW¼
All above 610 feet elevation N.G.V.D., containing 30.4 acres, more or less.

Section 9

W½
All above 610 feet elevation N.G.V.D., containing 75.5 acres, more or less.

Section 10

N½N½, LESS AND EXCEPT: Beginning at the northwest corner of the NW¼NE¼, run thence with the north boundary of Section 10, N 89°08'E, 71 feet, thence S 23°03'W, 80 feet, thence S 42°50'W, 80 feet, thence N 47°06'W, 79 feet, thence N 13°08'E, 75 feet, more or less, to the north line of said Section 10, thence along said north line, N 89°08'E, 60 feet, more or less, to the point of beginning, SW¼ NE¼SW¼NW¼
All above 610 feet elevation N.G.V.D., containing 18.4 acres, more or less.

Section 13

SW¼SE¼, SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 35.2 acres, more or less.

Section 16

Part of the NW¼NE¼ being more particularly described as: Beginning at the northwest corner of the NE¼ of Section 16, run thence with the north boundary of Section 16, East, 330 feet, thence S 36°44'E, 1,615 feet, to the southeast corner of the NW¼NE¼, run thence with the south boundary of the NW¼NE¼, West, 1,310 feet, run thence with the west boundary of the NW¼ NE¼, North, 1,330 feet, to the point of beginning, N½NW¼, N½SE¼NW¼, SW¼NE¼, NE¼NW¼SE¼, South 880 feet of the NE¼SE¼
All above 610 feet elevation N.G.V.D., containing 63.9 acres, more or less.

Section 17

SW¼SW¼NE¼, W½NE¼SE¼, NE¼ NW¼SE¼, NW¼NE¼NW¼, S½NE¼ NW¼, SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 20.4 acres, more or less.

Section 18

N½N½NW¼, E½SE¼, SW¼SW¼, W½ SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 23.6 acres, more or less.

Section 19

W½NW¼
All above 610 feet elevation N.G.V.D., containing 46.1 acres, more or less.

Section 20

NW¼SE¼, N½SW¼SE¼, W½NE¼SE¼, S½NE¼SE¼SE¼, SE¼SE¼SE¼
All above 610 feet elevation N.G.V.D., containing 27.8 acres, more or less.

Section 22

S½S½S½SE¼NE¼, SE¼SE¼, SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 30.9 acres, more or less.

Section 23

NE¼, E½NW¼, N½N½SE¼, N½S½N½ SE¼, NE¼SW¼, W½SW¼
All above 610 feet elevation N.G.V.D., containing 133.2 acres, more or less.

Section 24

N½N½NE¼NE¼, SW¼NE¼NE¼NE¼, NW¼NE¼, NW¼
All above 610 feet elevation N.G.V.D., containing 72.0 acres, more or less.

Section 25

N½SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 2.0 acres, more or less.

Section 26

N½S½, N½S½SE¼, S½SW¼

All above 610 feet elevation N.G.V.D., containing 121.7 acres, more or less.

Section 27

NW¼NE¼NE¼, LESS AND EXCEPT: S½ S½NW¼NE¼NE¼,N½NW¼NE¼, SW¼NW¼NE¼,NW¼NW¼SW¼ NE¼,S½SW¼NE¼,SW¼SW¼SE¼ NE¼,E½SW¼SE¼NE¼, W½SE¼SE¼ NE¼,W½E½SE¼SE¼NE¼,S½NE¼ SE¼NE¼,E½NW¼,N½SE¼, Part E½ SE¼SW¼,and SW¼SE¼being more particularly described as: E½SE¼SW¼ and SW¼SE¼, LESS AND EXCEPT: Beginning at the southwest corner SW¼ SE¼, run thence with the south boundary of Section 27, N 89°45'E, 160 feet, thence N 01°00'E, 300 feet, thence N 76°38'W, 600 feet, thence N 1°00'E, 241 feet, thence S 89°45'W, 240 feet, more or less, to a point located on the west boundary of the E½SE¼SW¼, thence along said west boundary, South, 690 feet, more or less, to a point on the south boundary of Section 27, thence along said south boundary N 89°45'E, 660 feet, more or less, to the point of beginning: ALSO LESS AND EXCEPT: Beginning at a point from which the northeast corner of the said SW¼SE¼bears N 10°12'E, 450 feet distant, more or less, run thence S 00°39'W, 125 feet, thence N 89°21'W, 150 feet, thence N 00°39'E, 125 feet, thence S 89°21'E, 150 feet, to the point of beginning, SE¼SE¼, E½NE¼SW¼, Part SW¼SW¼being more particularly described as: Beginning at the southwest corner of Section 27, thence run along the west line of said Section 27, N 00°46'E, 1,056 feet, run thence 89°45'E, 330 feet, thence S 00°46'W, 1,056 feet, to the south line of Section 27, thence along the south line of said Section 27, S 89°45'W, 330 feet, to the point of beginning

All above 610 feet elevation N.G.V.D., containing 141.6 acreas, more or less.

Section 28

NW¼NE¼, W½W½SE¼NE¼,NE¼SW¼ NE¼, S½SW¼NE¼,NE¼SE¼NW¼, SE¼SE¼SE¼NW¼, Part SE¼SE¼ more particularly described as: Beginning at the southeast corner of said Section 28, thence run along the south line of said Section 28, S 89°45'W, 413 feet, thence N 00°46'E, 1,056 feet, thence N 89°45'W, 413 feet, to the east line of said Section 28, thence S 00°46'W, 1,056 feet, more or less, to the point of beginning, E½SE¼ SW¼, SW¼SE¼SW¼, LESS AND EXCEPT: E½E½SW¼SE¼SW¼, SE¼ SW¼SW¼

All above 610 feet elevation N.G.V.D., containing 28.9 acres, more or less.

Section 33

E½NW¼, NE¼NW¼NW¼, S½S½S½ E½NW¼NW¼, E½NW¼SW¼NW¼, E½SW¼NW¼, NE¼SW¼

All above 610 feet elevation N.G.V.D., containing 60.9 acres, more or less.

Section 35

N½N½NW¼NW¼

All above 610 feet elevation N.G.V.D., containing 1.4 acres, more or less.

Township 1 South, Range 23 West (Montgomery County, Arkansas)

Section 2

Fractional N½NW¼, SE¼NW¼, LESS AND EXCEPT: Beginning at the southwest corner of the SE¼NW¼ of said Section 2, thence run along the west line of SE¼NW¼, North, 825 feet, more or less, to the northwest corner of the S½ S½NW¼SE¼NW¼, thence run in a southeasterly direction, 1,250 feet, more or less, to the southeast corner of the W½ SE¼NW¼, thence run along the south line of the SE¼NW¼, West, 660 feet, more or less, to the point of beginning, W½W½NW¼SE¼, E½ SW¼SE¼, Part of the NW¼SW¼SE¼, more particularly described as: Beginning at the northeast corner of the NW¼ SW¼SE¼ of said Section 2, thence run along the east line of NW¼SW¼SE¼, South, 330 feet, more or less, to the southeast corner of the N½NW¼SW¼ SE¼, thence in a northwesterly direction, 500 feet, more or less, to the northwest corner of the E½NW¼SW¼ SE¼, thence along the north line of the SW¼SE¼, East, 330 feet, more or less, to the point of beginning, NE¼SE¼NE¼ SW¼

All above 610 feet elevation N.G.V.D., containing 68.7 acres, more or less.

Section 11

S½NE¼,S½SE¼NW¼,NW¼SE¼,N½ NE¼SW¼,NE¼NW¼SW¼

All above 610 feet elevation N.G.V.D., containing 66.7 acres, more or less.

Section 13

W½W½NW¼,S½NW¼SE¼,N½S½NE¼ SW¼,SE¼SE¼NE¼SW¼,N½SE¼ NW¼SW¼,N½NW¼SW¼

All above 610 feet elevation N.G.V.D., containing 17.2 acres, more or less.

Section 14

That part of the SW¼NW¼ described as: Beginning at the southeast corner of the SW¼NE¼,run thence with the south boundary of the SW¼NE¼,West, 466.68 feet, thence north, 466.68 feet, thence East, 466.68 feet, to a point on the east boundary of the SW¼NE¼,run thence with said East boundary, South, to the point of beginning, SW¼SW¼SE¼ NW¼,S½SE¼SW¼NW¼,SW¼SW¼ NW¼, N½NE¼NE¼SE¼,W½NE¼ SE¼,NW¼SE¼, N½SW¼SE¼,N½S½ SW¼SE¼,NW¼NW¼NE¼SW¼,S½ N½NE½SW¼,S½NE¼SW¼,SE¼ SW¼,W½SW¼

All above 610 feet elevation N.G.V.D., containing 88.6 acres, more or less.

Section 15

S½SW¼,S½N½SW¼

All above 610 feet elevation N.G.V.D., containing 74.1 acres, more or less.

Section 16

S½SE¼

All above 610 feet elevation N.G.V.D., containing 59.4 acres, more or less.

Section 18

NW¼NW¼

All above 610 feet elevation N.G.V.D., containing 32.9 acres, more or less.

Section 19

S½NE¼,SW¼

All above 610 feet elevation N.G.V.D., containing 129.2 acres, more or less.

Section 20

N½

All above 610 feet elevation N.G.V.D., containing 167.3 acres, more or less.

Section 21

SW¼NE¼,N½NW¼,N½SE¼NW¼,N½ SW¼SE¼NW¼,N½S½SW¼SE¼ NW¼,SW¼NW¼,N½NW¼SE¼

All above 610 feet elevation N.G.V.D., containing 85.3 acres, more or less.

Section 22

W½NE¼NE¼,E½NW¼,NW¼NW¼SE¼, N½NE¼SW¼,N½N½S½NE¼SW¼

All above 610 feet elevation N.G.V.D., containing 71.5 acres, more or less.

Section 23

S½N½NE¼,E½NW¼SE¼NE¼,NW¼ NW¼SE¼NE¼,W½SE¼SE¼NE¼, SE¼SE¼SE¼NE¼,SE¼SW¼SE¼NE¼

All above 610 feet elevation N.G.V.D., containing 22.5 acres, more or less.

Section 24

SE¼SE¼SW¼NE¼,S½SW¼SW¼NW¼, S½NE¼NE¼SE¼,NW¼NE¼SE¼,N½ SE¼NE¼SE¼,E½NW¼SE¼,N½NW¼ SE¼SE¼,S½SE¼SW¼,S½N½SE¼ SW¼,NW¼NW¼SW¼

All above 610 feet elevation N.G.V.D., containing 29.2 acres, more or less.

Section 25

NW¼NE¼NE¼NE¼,S½NW¼NE¼NE¼, N½N½NW¼NE¼,W½SW¼NW¼ NW¼NE¼,E½NE¼NE¼NW¼,W½ NW¼NW¼,N½NE¼NW¼NW¼

All above 610 feet elevation N.G.V.D., containing 13.3 acres, more or less.

Section 26

NE¼NE¼,N½N½SE¼NE¼,W½SW¼ NW¼,W½SE¼SW¼,NW¼SW¼

All above 610 feet elevation N.G.V.D., containing 40.4 acres, more or less.

Section 27

W½SE¼NW¼,S½N½NW¼NW¼,S½ NW¼NW¼,SW¼NW¼,NW¼SE¼, SE¼SE¼,E½E½SW¼SE¼,W½SW¼ SE¼,SE¼SW¼,W½SW¼

All above 610 feet elevation N.G.V.D., containing 148.1 acres, more or less.

Section 28

E½NE¼NE¼,S½NE¼,SE¼

All above 610 feet elevation N.G.V.D., containing 152.6 acres, more or less.

Section 29

NW¼NW¼, SW¼SE¼NW¼,NW¼SE¼

All above 610 feet elevation N.G.V.D., containing 28.6 acres, more or less.

Section 30

E½E½,SE¼SW¼NE¼,N½N½NW¼, NW¼SE¼,S½N½SW¼

All above 610 feet elevation N.G.V.D., containing 117.1 acres, more or less.

Section 18

Section 33

N½NE¼
All above 610 feet elevation N.G.V.D., containing 75.4 acres, more or less.

Section 34

N½NE¼, NE¼NW¼
All above 610 feet elevation N.G.V.D., containing 86.9 acres, more or less.

Section 35

NW¼NE¼, S½NW¼, NW¼SE¼, NE¼ SW¼, N½NW¼SW¼
All above 610 feet elevation N.G.V.D., containing 168.5 acres, more or less.

Township 1 South, Range 24 West (Montgomery County, Arkansas)

Section 11

Part of the S½SE¼ more particularly described as: Beginning at the southeast corner of Section 11, run thence with the south boundary of Section 11, N 87°00'W, 1,490 feet, thence N 75°42'E, 1,520 feet, to a point located on the east boundary of Section 11, run thence with the said east boundary, S 00°40'W, 460 feet, to the point of beginning

The above described lands are herein conveyed in their entirety regardless of elevation and containing 6.0 acres more or less.

Section 12

SE¼SE¼
All above 610 feet elevation N.G.V.D., containing 35.0 acres, more or less.

Section 13

N½NE¼NE¼, N½S½NE¼NE¼, NW¼ NW¼, S½NW¼, Part E½NE¼more particularly described as: Beginning at the southeast corner of the E½NE¼, thence with the south boundary of the E½NE¼, west, 165 feet, thence north 1,320 feet to a point located on the south boundary of the NE¼NE¼, thence with the south boundary of the NE¼NE¼, West, 165 feet, thence North, 330 feet, thence east, 330 feet to a point located on the east boundary of Section 13, thence with the east boundary of Section 13, South, 1,650 feet to the point of beginning, E½SE¼NE¼SE¼, W½SE¼, SW¼
All above 610 feet elevation N.G.V.D., containing 247.6 acres, more or less.

Section 14

N½NE¼, LESS AND EXCEPT: Part NW¼ NE¼ more particularly described as: Beginning at the northwest corner of the NE¼, run thence with the north boundary of Section 14, S 87°00'E, 1,150 feet, thence S 75°42'W, 1,205 feet, to a point located on the west boundary of the NE¼, run thence with the said west boundary, N 00°53'E, 355 feet, to the point of beginning of the said exception, SE¼ NE¼, NE¼SW¼NE¼, E½SE¼, LESS AND EXCEPT: W½W½E½SE¼
All above 610 feet elevation N.G.V.D., containing 122.5 acres, more or less.

Section 15

SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 38.2 acres, more or less.

Section 16

S½SE¼, SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 66.0 acres, more or less.

Section 19

E½SE¼SE¼NE¼, NW¼SE¼SE¼NE¼, N½SE¼NE¼, SW¼NE¼, LESS AND EXCEPT: SE¼SW¼SW¼NE¼, SE¼ NW¼, NE¼SW¼, SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 127.2 acres, more or less.

Section 20

SW¼SW¼NW¼, W½SE¼SW¼NW¼, SE¼SE¼SW¼NW¼, E½W½SE¼ NW¼, W½E½SE¼NW¼, W½SW¼ SE¼, LESS AND EXCEPT: W½SW¼ SW¼SW¼SE¼, W½NE¼NE¼SW¼, N½NW¼NE¼SW¼, E½SE¼NE¼ SW¼,N½ SW¼NE¼SW¼,NE¼NW¼ SW¼,N½NW¼NW¼SW¼
All above 610 feet elevation N.G.V.D., containing 22.1 acres, more or less.

Section 21

E½, LESS AND EXCEPT: E½SW¼SE¼, E½W½
All above 610 feet elevation N.G.V.D., containing 260.8 acres, more or less.

Section 22

S½SE¼NE¼, SW¼NE¼, SE¼NW¼, W½NW¼, S½, LESS AND EXCEPT: all that part S½ lying east of Highway 27
All above 610 feet elevation N.G.V.D., containing 279.0 acres, more or less.

Section 23

SE¼NE¼, E½SW¼NE¼
All above 610 feet elevation N.G.V.D., containing 35.9 acres, more or less.

Section 24

SE¼, NE¼SW¼
All above 610 feet elevation N.G.V.D., containing 97.7 acres, more or less.

Section 25

NW¼, S½NE¼SE¼, SW¼SE¼, N½ NW¼SE¼, SW¼NW¼SE¼, SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 142.0 acres, more or less.

Section 26

NE¼
All above 610 feet elevation N.G.V.D., containing 126.5 acres, more or less.

Section 27

N½N½NE¼ and N½S½ N½NE¼ LESS AND EXCEPT: All that part thereof lying east of Highway 27, NW¼, SE¼, LESS AND EXCEPT: All that part of SE¼ lying east of Highway 27, SW¼
All above 610 feet elevation N.G.V.D., containing 248.6 acres, more or less.

Section 28

E½, NE¼NW¼, S½SW¼
All above 610 feet elevation N.G.V.D., containing 274.8 acres, more or less.

Section 29

S½NE¼, NW¼NE¼, E½E½NW¼, N½ SE¼, SW¼SE¼, W½SE¼SE¼, W½ W½E½SE¼SE¼
All above 610 feet elevation N.G.V.D., containing 206.2 acres, more or less.

Section 30

SW¼NE¼NE¼, W½SE¼NE¼, SE¼ NW¼, NW¼NW¼
All above 610 feet elevation N.G.V.D., containing 104.5 acres, more or less.

Section 32

N½ NE¼
All above 610 feet elevation N.G.V.D., containing 74.8 acres, more or less.

Section 33

NW¼NW¼NE¼, S½SE¼NE¼, SW¼ NE¼, N½NE¼NW¼, SW¼NE¼NW¼, N½SE¼NE¼, SW¼NW¼NW¼, E½ NW¼NW¼, S½NW¼
All above 610 feet elevation N.G.V.D., containing 137.9 acres, more or less.

Section 34

E½NW¼NW¼, N½SW¼NW¼
All above 610 feet elevation N.G.V.D., containing 7.4 acres, more or less.

Township 2 South, Range 20 West (Garland County, Arkansas)

Section 6

SW¼
All above 610 feet elevation N.G.V.D., containing 114.5 acres, more or less.

Section 7

Part NW¼ and N½SW¼ more particularly described as: Beginning at the northeast corner of the W½, run thence along the east boundary of said W½, South 2,600 feet, more or less, to a point lying 500 feet northwesterly of the centerline of an existing county road, thence parallel with said road centerline, southwesterly, 1,000 feet, more or less, to the intersection of said line with the south line of the N½ NW¼NE¼SW¼ thence along said south line, West, 400 feet, more or less, to the Southwest corner of the N½NW¼NE¼ SW¼, thence in a northwesterly direction 800 feet, more or less, to the southwest corner of the N½NE¼NW¼ NW¼SW¼, thence along the west line of the NE¼NW¼NW¼SW¼ and the west line of the E½SW¼SW¼NW¼, north, 830 feet, more or less, to the northwest corner E½SW¼SW¼NW¼, thence along the north line of the SW¼ SW¼NW¼, West, 270 feet, more or less, to the southwest corner NW¼SW¼ NW¼, thence along the west boundary of Section 7, North 1,992 feet, more or less, to the northwest corner of Section 7, thence along the north boundary of Section 7, East, 2,401 feet, more or less, to the point of beginning.

The above described lands are herein conveyed in their entirety regardless of elevation and containing 151.1 acres, more or less.

Section 19

All that part of the W½W½ said Section 19 lying west of the right descending top bank of the Ouachita River and south and west of the line described as: Beginning at the northwest corner of said Section 19, thence run southeasterly to the southeast corner of the N½NE¼ SW¼NW¼.

The above described lands are herein conveyed in their entirety regardless of elevation and containing 39.7 acres, more or less.

Section 30

All that part of the NW¼NW¼ west of the Ouachita River and above the 400 feet elevation (MSL).

All above 400 feet elevation MSL, containing 2.0 acres, more or less.

Township 2 South, Range 21 West (Garland County, Arkansas)

Section 1

S½NE¼, W½NW¼, N½SE¼, NW¼ SW¼, S½SW¼

All above 610 feet elevation N.G.V.D., containing 179.9 acres, more or less.

Section 2

S½NE¼, SE¼NW¼, NW¼NW¼, SE¼ SE¼, E½SW¼

All above 610 feet elevation N.G.V.D., containing 73.0 acres, more or less.

Section 3

NW¼NE¼, SW¼NW¼, E½SE¼, SW¼ SE¼, SE¼SW¼

All above 610 feet elevation N.G.V.D., containing 171.5 acres, more or less.

Section 4

S½SW¼, SE¼, SE¼NE¼

All above 610 feet elevation N.G.V.D., containing 19.7 acres, more or less.

Section 7

SE¼NE¼, W½SE¼

All above 610 feet elevation N.G.V.D., containing 4.9 acres, more or less.

Section 8

SW¼NW¼

All above 610 feet elevation N.G.V.D., containing 4.9 acres, more or less.

Section 9

E½NW¼NW¼, NE¼NE¼SW¼NW¼

All above 610 feet elevation N.G.V.D., containing 10.8 acres, more or less.

Section 11

S½NW¼NE¼

All above 610 feet elevation N.G.V.D., containing 2.7 acres, more or less.

Section 12

S½SW¼SW¼

The above described lands are herein conveyed in their entirety regardless of elevation and containing 20.0 acres, more or less.

Section 13

Part SW¼NW¼ more particularly described as: Beginning at the northeast corner of SW¼NW¼, run thence along the east line of said SW¼NW¼, South, 150 feet, more or less, to a point lying 250 feet northwesterly of the centerline of an existing county road, thence parallel with said road centerline, southwesterly, 1,490 feet, more or less, to the west boundary of said Section 13, thence along said west boundary, north, 750 feet, more or less, to the northwest corner of the SW¼ NW¼, thence along the north line of the SW¼NW¼, 1,320 feet, more or less, to the point of beginning; Part SW¼NW¼ and NW¼SW¼ more particularly described as: Beginning at the northeast corner NW¼SW¼, run thence along the east line of said NW¼SW¼, South, 165 feet, more or less, to the southeast corner N½N½N½NW¼SW¼, thence in a northwesterly direction 1,330 feet, more or less, to the southwest corner of the SW¼NW¼, thence along the west line of Section 13, north, 50 feet, more or less, to a point lying 250 feet southeasterly of the centerline of an existing county road, thence parallel with said road centerline, northeasterly 1,400 feet, more or less, to the east line of the SW¼NW¼, thence along said line, south, 600 feet, more or less, to the point of beginning; Part SE¼ SE¼ more particularly described as: Beginning at the southeast corner of said Section 13, run thence along the south boundary of said Section 13, West, 1,320 feet, more or less, to the southwest corner of the SE¼SE¼, thence along the west line of the SE¼SE¼, North, 495 feet, more or less, to the northwest corner N½N½S½SE¼SE¼, thence southeasterly, 1,410 feet, more or less, to the point of beginning.

The above described lands are herein conveyed in their entirety regardless of elevation and containing 31.7 acres, more or less.

Section 14

W½NW¼NW¼; Part S½NE¼SE¼, more particularly described as: Beginning as the southeast corner of the NE¼SE¼, run thence along the south line of the NE¼SE¼, West, 1,320 feet, more or less, to the southwest corner NE¼SE¼, thence northeasterly 1,476 feet, more or less, to the northeast corner S½NE¼ SE¼, thence along the east line of Section 14, South, 660 feet, more or less, to the point of beginning. Part N½SE¼ SW¼ more particularly described as: Beginning at the northeast corner of the SE¼SW¼, run thence along the east line SE¼SW¼, South, 660 feet, more or less, to the southeast corner of the N½SE¼ SW¼, thence along the South line of the N½SE¼SW¼, West, 1,320 feet, more or less, to the southwest corner N½SE¼ SW¼, thence northeasterly, 1,476 feet, more or less, to the point of beginning; SW¼SW¼ and SE¼NW¼SW¼, LESS AND EXCEPT: Commencing at the northeast corner SE¼NW¼SW¼, run thence along the east line of the SE¼ NW¼SW¼, South, 400 feet, more or less, to a point lying 250 feet northwesterly of the centerline of an existing county road for the point of beginning, thence from said point of beginning continuing along said east line of the SE¼NW¼SW¼, South, 700 feet, more or less, to a point lying 250 feet, southeasterly of the centerline of said existing county road, thence parallel with said existing road centerline, southwesterly, 1,590 feet, more or less, to the west boundary of said Section 14, thence along said West boundary, North, 510 feet, more or less, to a point lying 250 feet northwesterly of said existing county road centerline, thence parallel with said existing road centerline, northeasterly, 1,700 feet, more or less, to the point of beginning.

The above described lands are herein conveyed in their entirety regardless of elevation and containing 64.9 acres, more or less.

Section 18

S½NW¼NE¼, S½NE¼NW¼, SW¼ NW¼

All above 610 feet elevation N.G.V.D., containing 44.8 acres, more or less.

Section 24

E½NE¼

The above described lands are herein conveyed in their entirety regardless of elevation.

Also:

All that part of the E½SE¼ lying between the elevation 400 feet (MSL) and elevation 420 feet (MSL).

Section 24 contains in the aggregate 86.1 acres, more or less.

Section 25

All that part of the E½NE¼ lying between the elevation 400 feet (MSL) and elevation 419 feet (MSL), containing 11.5 acres, more or less.

Township 2 South, Range 22 West (Garland County, Arkansas)

Section 8

S½NW¼

All above 610 feet elevation N.G.V.D., containing 11.5 acres, more or less.

Section 9

SW¼SW¼, W½SE¼SW¼

All above 610 feet elevation N.G.V.D., containing 12.4 acres, more or less.

Section 10

S½SE¼SW¼

All above 610 feet elevation N.G.V.D., containing 6.4 acres, more or less.

Section 11

S½SW¼SW¼

All above 610 feet elevation N.G.V.D., containing 8.5 acres, more or less.

Section 14

NW¼NE¼, S½NE¼NW¼, SW¼NW¼, NW¼SW¼

All above 610 feet elevation N.G.V.D., containing 78.5 acres, more or less.

Section 15

N½NE¼NW¼, SE¼NE¼, NE¼SE¼
All above 610 feet elevation N.G.V.D., containing 73.4 acres, more or less.

Section 16

N½NW¼, E½SW¼NW¼, W½SE¼ NW¼, S½SE¼SE¼NW¼, NW¼SE¼, SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 73.5 acres, more or less.

Section 17

E½NE¼NE¼
All above 610 feet elevation N.G.V.D., containing 8.3 acres, more or less.

Section 21

SE¼NE¼, N½SW¼NE¼, E½SE¼SW¼ NE¼
All above 610 feet elevation N.G.V.D., containing 24.1 acres, more or less.

Section 26

NW¼SW¼NW¼
All above 610 feet elevation N.G.V.D., containing 2.7 acres, more or less.

Section 27

N½SE¼NE¼, SW¼SE¼NE¼, E½NW¼ NE¼SE¼
All above 610 feet elevation N.G.V.D., containing 26.2 acres, more or less.

Township 2 South, Range 23 West (Montgomery County, Arkansas)

Section 1

S½SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 2.5 acres, more or less.

Section 3

NE¼, SW¼NW¼, N½SE¼NW¼
All above 610 feet elevation N.G.V.D., containing 48.9 acres, more or less.

Section 4

W½SE¼NW¼, SE¼SE¼NW¼, E½SE¼
All above 610 feet elevation N.G.V.D., containing 41.7 acres, more or less.

Section 6

West 879.78 feet of the NW¼SE¼, S½SE¼
All above 610 feet elevation N.G.V.D., containing 47.3 acres, more or less.

Section 7

N½NE¼, W½SE¼NE¼, W½W½NE¼ SE¼NE¼, SE¼, S½SE¼SE¼NE¼
All above 610 feet elevation N.G.V.D., containing 128.5 acres, more or less.

Section 8

NE¼NE¼, N½SW¼NW¼, SW¼SW¼ NW¼, NE¼NE¼SE¼, NW¼SW¼, SE¼SW¼SW¼, S½S½NE¼SW¼ SW¼, W½SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 62.2 acres, more or less.

Section 9

S½NW¼, N½NW¼SE¼, SW¼NW¼ NE¼SE¼, N½NW¼NE¼SE¼, SW¼ NW¼SE¼, SW¼SE¼NW¼SE¼, N½ NW¼SW¼SE¼, NW¼NE¼SW¼SE¼, N½NW¼SW¼
All above 610 feet elevation N.G.V.D., containing 83.3 acres, more or less.

Section 11

E½NE¼NE¼
All above 610 feet elevation N.G.V.D., containing 3.6 acres, more or less.

Section 12

E½NE¼
All above 610 feet elevation N.G.V.D., containing 33.0 acres, more or less.

Section 15

S½SW¼NE¼SW¼, NW¼SW¼, S½ SW¼
All above 610 feet elevation N.G.V.D., containing 30.8 acres, more or less.

Section 16

W½SE¼NE¼, NE¼NE¼SE¼, W½NE¼ SE¼, NW¼SE¼, W½NE¼SE¼SE¼, NE¼NE¼SE¼SE¼, W½ SE¼SE¼, NW¼SE¼SE¼SE¼, N½SW¼SE¼, NE¼SE¼SW¼, E½ NW¼SE¼SW¼, S½SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 71.2 acres, more or less.

Section 17

W½E½NE¼NW¼NW¼, W½NE¼NW¼ NW¼, SW¼NW¼NW¼, SW¼NW¼, S½SE¼SE¼, N½NW¼SW¼
All above 610 feet elevation N.G.V.D., containing 25.2 acres, more or less.

Section 18

E½NE¼, NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼, SW¼
All above 610 feet elevation N.G.V.D., containing 246.7 acres, more or less.

Section 19

N½N½NW¼
All above 610 feet elevation N.G.V.D., containing 12.0 acres, more or less.

Section 20

E½NE¼NE¼, NW¼NE¼NE¼,NE¼SW¼ NE¼NE¼, E½ SW¼NE¼, E½NW¼ SE¼NE¼, E½SE¼NE¼, SW¼SE¼ NE¼, NW¼SE¼, S½ SE¼
All above 610 feet elevation N.G.V.D., containing 54.3 acres, more or less.

Section 21

Part E½NE¼ more particularly described as: Beginning at a point located on the west boundary of the E½NE¼ from which point the southwest corner of the said E½NE¼ bears South, 510 feet distant, run thence N 33°40'E, 940 feet, thence N 70°10'E, 730.7 feet, thence S 16°00'E, 300.3 feet, thence S 01°25'E, 303.1 feet, to a point located on the east boundary of Section 21, thence S 71°00'W, 1,400 feet, to the point of beginning, The N½NW¼SW¼NW¼ of Section 21, Township 2 South, Range 23 West, in Montgomery County, Arkansas, LESS AND EXCEPT THEREFROM a parcel in the west part thereof more particularly described as: Beginning at the Northwest corner of the said N½ NW¼SW¼NW¼, run thence with the north boundary of the N½NW¼SW¼ NW¼, East, 6.3 feet, thence S 01°25'E, 331 feet, to a point located on the south boundary of the N½NW¼SW¼NW¼, run thence with the said south boundary, West, 34.1 feet, to a point located on the west boundary of Section 21, run thence with the said west boundary, North, 330 feet, to the point of beginning of the said exception, S½SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 28.2 acres, more or less.

Section 22

NW¼NW¼, Part N½NW¼SE¼ more particularly described as: All that part of the N½NW¼SE¼ east of Tompkins Bend Road, S½NW¼SE¼, S½NE¼ SW¼
All above 610 feet elevation N.G.V.D., containing 65.0 acres, more or less.

Section 28

NW¼NW¼
All above 610 feet elevation N.G.V.D., containing 11.2 acres, more or less.

Section 29

N½N½NE¼NE¼, SW¼NW¼NE¼NE¼, W½SW¼NE¼NE¼, Part SE¼NE¼ more particularly described as: All that part of the SE¼NE¼ that lies south and west of West Prong Cap Creek, W½ NE¼, SE¼NW¼, NE¼SW¼
All above 610 feet elevation N.G.V.D., containing 82.8 acres, more or less.

Township 2 South, Range 24 West (Montgomery County, Arkansas)

Section 13

NE¼, E½E½SE¼, NW¼NE¼SE¼, NW¼ SW¼NE¼SE¼, NW¼SE¼, N½SW¼, N½SW¼SW¼
All above 610 feet elevation N.G.V.D., containing 182.3 acres, more or less.

Section 14

NE¼, S½NW¼, E½E½NE¼NW¼, S½
All above 610 feet elevation N.G.V.D., containing 225.3 acres, more or less.

Section 15

N½SE¼NE¼, NW¼NE¼, N½SW¼NE¼, NW¼NW¼, SE¼SE¼, SE¼SW¼
All above 610 feet elevation N.G.V.D., containing 85.8 acres, more or less.

Section 16

N½N½NE¼, NE¼SE¼, N½NW¼SE¼, NE¼NE¼SW¼, W½NE¼SW¼, NW¼ SW¼
All above 610 feet elevation N.G.V.D., containing 76.7 acres, more or less.

Section 17

S½NE¼SE¼, SW¼SE¼
All above 610 feet elevation N.G.V.D., containing 25.8 acres, more or less.

Section 23

S½NE¼, N½NW¼
All above 610 feet elevation N.G.V.D., containing 50.1 acres, more or less.

Section 24

NE¼NE¼
All above 610 feet elevation N.G.V.D., containing 1.0 acres, more or less.

The lands herein described total 10,660.5 acres, more or less, of which 6,129.6 acres are in Montgomery County and 4,530.9 acres are in Garland County.

Exhibit B

Part 1—Lands acquired by the Department of Agriculture for and in connection with the Ouachita National Forest, as follows:

Fifth Principal Meridian

(Garland and Montgomery Counties, Arkansas)

Garland County

T.1N.,R.22W.,
Sec. 32: NW¼NE¼.
Sec. 34: pt. S½SW¼ below 610'.
T.1S.,R.21W.,
Sec. 7: pt. SW¼NW¼ below 610', SE¼ NW¼.
Sec. 8: pt. SE¼SW¼ below 610', pt. W½ NE¼ below 610'.
Sec. 14: pt. SW¼ below 610'.
Sec. 17: pt. E½NW¼ below 610', pt. E½ SE¼ below 610', pt. NW¼NW¼ below 610', pt. S½SW¼SE¼ below 610'.
Sec. 18: pt. SW¼NW¼ below 610', pt. NW¼SW¼ below 610'.
Sec. 19: pt. S½SE¼ below 610'.
Sec. 20: pt. SW¼SW¼ below 610'.
Sec. 30: pt. W½NE¼ below 610'.
T.1S., R.22W.,
Sec. 7: pt. SW¼ below 610'.
Sec. 13: pt. S½SW¼SW¼ below 610', pt. NE¼SW¼ below 610', pt. NW¼SE¼ below 610', pt. E½SE¼ below 610', pt. SE¼NE¼ below 610'.
Sec. 14: pt. E½SE¼SE¼ below 610'.
Sec. 19: pt. W½SW¼ below 610'.
Sec. 22: pt. SW¼NE¼ below 610', pt. NE¼ SE¼ below 610', pt. SW¼SE¼ below 610', W½NE¼NE¼.
Sec. 35: NE¼NE¼.

Montgomery County

T.1S.,R.23W.,
Sec. 15: pt. NW¼SE¼ below 610', pt. E½ SE¼ below 610', pt. SE¼NE¼ below 610', pt. N½NE¼ below 610'.
Sec. 19: pt. SE¼NW¼ below 610'.
Sec. 28: pt. SW¼SW¼ below 610'.
Sec. 29: E½SW¼NE¼ below 610', pt. SW¼NW¼ below 610', pt. SW¼ below 610', pt. NW¼SE¼ below 610', N½NE¼ SE¼, N½SE¼NE¼SE¼, pt. SW¼NE¼ SE¼ below 610', pt. S½SE¼NE¼SE¼ below 610', pt. SE¼SE¼ below 610', pt. SW¼SE¼ below 610'.
Sec. 31: pt. NW¼ below 610'.
Sec. 33: pt. N½ below 610'.
T.1S.,R.24W.,
Sec. 21: pt. E½SW¼SE¼ below 610'.
Sec. 22: pt. SW¼NE¼NW¼ below 610'.
Sec. 24: pt. NW¼NW¼ below 610'.
Sec. 25: pt. NE¼SW¼ below 610'
Sec. 26: pt. SE¼SW¼ below 610'.
Sec. 30: pt. N½SW¼NE¼ below 610'.
Sec. 34: pt. S½SW¼NW¼ below 610'.
Sec. 36: pt. E½NE¼ below 610'.

Garland County

T.2S.,R.21W.,
Sec. 12: pt. N½NE¼ below 610', SE¼ NW¼, NE¼SW¼, NW¼SE¼.
Sec. 13: pt. NE¼NW¼ lying 250' on either side of centerline, pt. SE¼NW¼lying 250' on either side of centerline, NW¼ NE¼, that part of the SW¼SE¼ and the E½SW¼ more particularly described as follows: Beginning at the C–W 1/16 corner of said Section 13; thence S01°34'50"W (all bearings based on 1982 Forest Service Survey by Arkansas R.L.S. 427) along the West line of the NE¼SW¼ a distance of 861.64 feet to a point; thence S60°56'15"E a distance of 2985.77 feet to a point on the East line of the SW¼SE¼; thence N01°26'06"E along said East line a distance of 926.28 feet to the SE1/16 corner; thence N88°51'55"W a distance of 1332.10 feet to the C–S 1/16 corner; thence N01°28'13"E along the East line of the NE¼SW¼ a distance of 640.49 feet to a point; thence N60°56'15"W a distance of 1480.24 feet to the point of beginning.
T.2S.,R.22W.,
Sec. 15: pt. SW¼NW¼ below 610'.
Sec. 16: NE¼NE¼SE¼, pt. S½NE¼SE¼ below 610', pt. SW¼SE¼ below 610', pt. N½SW¼ below 610'.
Sec. 17: pt. NE¼NW¼ below 610', pt. NW¼NE¼ below 610', pt. W½NE¼ NE¼ below 610'.
Sec. 20: SE¼SE¼.
Sec. 21: S½SW¼, SE¼SE¼.
Sec. 22: pt. S½SW¼ below 610', pt. SW¼ SE¼ below 610'.
Sec. 27: NW¼NW¼, NE¼NW¼, W½ NE¼ west of the road, pt. W½NE¼ east of road below 610', pt. NE¼NE¼ below 610'.
Sec. 28: pt. NE¼NE¼ below 610'.
Sec. 29: pt. NE¼NW¼ below 610, NE¼ NE¼, pt. E½SE¼ below 610.
T.2S.,R.23W.,
Sec. 3: pt. N½NW¼ below 610'.
Sec. 4: pt. S½SW¼ below 610', pt. SW¼ SE¼ below 610', pt. S½NE¼ below 610', pt. NE¼SE¼NW¼ below 610', pt. NW¼ SE¼ below 610'.
Sec. 5: pt. SW¼ below 610', pt. SW¼NW¼ below 610'.
Sec. 6: pt. NE¼SE¼ below 610', pt. SE¼ SE¼NE¼ below 610', pt. NE¼SW¼ below 610'.
Sec. 7: pt. W½ below 610'.
Sec. 9: pt. NW¼NW¼ below 610', pt. NE¼ NW¼ below 610', pt. NW¼NE¼ below 610', pt. SW¼NE¼ below 610', pt. E½ NE¼ below 610', pt. NE¼SW¼ below 610'.
Sec. 16: NW¼NE¼SW¼, W½SW¼NE¼ SW¼, pt. E½SW¼NE¼SW¼ below 610', pt. E½NE¼SW¼ below 610'.
Sec. 18: pt. W½NE¼ below 610'.
Sec. 29: pt. N½NW¼ below 610'.

Montgomery County

T.2S.,R.24W.,
Sec. 12: pt. SE¼SW¼ below 610', pt. SW¼ SE¼ below 610'.
Sec. 15: pt. SW¼SW¼ below 610', pt. SW¼SE¼ below 610'.
Sec. 23 pt. S½NW¼ below 610'.

Lands transferred herein consist of approximately 2,427.28 acres. Descriptions of the transferred tracts and maps depicting their location are on file in the Office of the District Engineer, Vicksburg District, Corps of Engineers, Vicksburg, Mississippi, and the Office of the Forest Supervisor, Ouachita National Forest, Hot Springs, Arkansas.

Part 2—Lands withdrawn from the public domain for National Forest purposes by Presidential Proclamation and from all forms of appropriation by Public Land Order 628 (**Federal Register** 1/19/50), Public Land Order 875 (**Federal Register** 12/16/52) and Public Land Order 516 (**Federal Register** 8/28/48), in connection with the Lake Ouachita Project, as follows:

Fifth Principal Meridian

(Garland and Montgomery Counties, Arkansas)

Garland County

T.1N.,R.22W.,
Sec. 31: pt. NW¼SE¼ below 610'.
Sec. 32: E½NW¼, SW¼NW¼, NE¼ SW¼, pt. SE¼SE¼ below 610'.
Sec. 33: pt. SW¼SW¼ below 610', pt. E½ SE¼ below 610'.
T.1S.,R.20W.,
Sec. 29: NE¼NW¼.
Sec. 31: N½NE¼.
T.1S., R. 21. W.,
Sec. 1: pt. SW¼SW¼ below 610'.
Sec. 10: pt. SE¼NE¼ below 610'., pt. SW¼ SE¼ below 610'.
Sec. 11: pt. NW¼NW¼ below 610'.
Sec. 12: pt. SW¼NW¼ below 610'.
Sec. 13: pt. NW¼NE¼ below 610', pt. NW¼ below 610'.
Sec. 14: pt. NW¼NE¼ below 610'., pt. SE¼ NE¼ below 610', pt. S½NW¼ below 610'.
Sec. 15: pt. NW¼ below 610', pt. NW¼ SE¼ below 610'.
Sec. 17: pt. SW¼NW¼ below 610', pt. N½ SW¼ below 610'.
Sec. 19: pt. N½NW¼ below 610', SW¼ NW¼, pt. NW¼NE¼ below 610', pt. SE¼SW¼ below 610', pt. NE¼SE¼ below 610'.
Sec. 20: pt. NE¼NW¼ below 610', pt. NW¼SW¼ below 610'.
Sec. 21: pt. NE¼NW¼ below 610', pt. S½NW¼ below 610', pt. NW¼NE¼ below 610', pt. SW¼ below 610'.
Sec. 22: SW¼NE¼, SE¼SW¼, pt. S½SE¼ below 610'.
Sec. 23: pt. SW¼ below 610', pt. SE¼NW¼ below 610', pt. S½NE¼ below 610'.
Sec. 24: pt. SE¼SW¼ below 610'.
Sec. 25: SW¼SE¼, pt. N½ below 610', pt. W½SW¼ below 610'.
Sec. 26: pt. SW¼ below 610', pt. SE¼ below 610', pt. SE¼NE¼ below 610'.
Sec. 27: pt. SE¼SW¼ below 610', pt. SW¼ SE¼ below 610', pt. N½ below 610', pt. NE¼SE¼ below 610'.
Sec. 28: S½SW¼, NW¼NE¼, pt. SE¼ NE¼ below 610', pt. N½NW¼ below 610' E½SE¼SE¼, E½NW¼SE¼SE¼.
Sec. 29: S½SE¼, pt. S½NW¼ below 610', pt. SW¼NE¼ below 610', pt. NE¼NE¼ below 610'.
Sec. 30: pt. SE¼NE¼ below 610'.
Sec. 31: SW¼SW¼.
Sec. 32: N½NE¼, SW¼NW¼.
Sec. 33: E½NE¼NE¼, SW¼NE¼, N½ NW¼, SE¼SE¼NW¼, S½SW¼SE¼

NW¼, NW¼SW¼SE¼NW¼, SW¼ NW¼SE¼NW¼, N½NW¼SE¼NW¼.
Sec. 34: pt. NW¼NW¼ below 610'.
Sec. 36: NE¼NW¼, NW¼SW¼, pt. SE¼ below 610'.
T.1S.,R.22W.,
Sec. 4: pt. SE¼SE¼ below 610', pt. SW¼ NW¼ below 610'.
Sec. 5: pt. NE¼SE¼ below 610', pt. N½ NW¼ below 610', pt. SE¼NW¼ below 610', pt. S½NE¼ below 610'.
Sec. 7: pt. W½SE¼ below 610'.
Sec. 8: pt. NE¼ below 610', pt. NW¼SE¼ below 610', pt. W½NE¼SE¼ below 610', N½NE¼NE¼SE¼, SW¼NE¼NE¼ SE¼.
Sec. 9: pt. N½NE¼ below 610'.
Sec. 10: pt. S½SW¼NE¼ below 610', NW¼NW¼SW¼NE¼, NE¼NW¼SE¼ NW¼, pt. S½S½SE¼NW¼, NE¼NE¼ SW¼NW¼, pt. W½E½SW¼NW¼, pt. E½SE¼SW¼NW¼, pt. W½SW¼ NW¼.
Sec. 17: pt. W½NW¼ below 610', pt. SE¼ NW¼ below 610', pt. N½SW¼ below 610'.
Sec. 19: pt. E½NW¼ below 610', pt. W½ NE¼ below 610', pt. NE¼SW¼ below 610'.
Sec. 21: pt. S½SW¼ below 610'.
Sec. 24: pt. S½NE¼ below 610'.
Sec. 25: NW¼NE¼, NW¼NW¼, pt. N½ SW¼ below 610', NW¼SE¼.
Sec. 26: NE¼NE¼, NW¼NW¼, pt. S½ NW¼ below 610'.
Sec. 28: pt. N½NW¼ below 610', pt. NE¼ SW¼ below 610', pt. W½SE¼ below 610'.
Sec. 30: W½NW¼.
Sec. 31: S½SE¼, NW¼NE¼.
Sec. 33: SW¼SW¼, pt. NE¼ below 610', pt. NW¼SE¼ below 610'.
Sec. 34: NW¼SW¼.
Sec. 36: S½SE¼.

Montgomery County

T.1S.,R.23W.,
Sec. 2: pt. W½NE¼ below 610'.
Sec. 11: pt. NE¼NE¼ below 610', pt. E½ NW¼NE¼ below 610', W½NW¼NE¼, pt. NE¼SE¼ below 610', pt. S½SE¼ below 610'.
Sec. 12: pt. SW¼NW¼ below 610', pt. SW¼ below 610'.
Sec. 13: pt. S½SE¼ below 610'.
Sec. 14: pt. N½NE¼ below 610', pt. SE¼ NE¼ below 610'.
Sec. 15: pt. SW¼SE¼ below 610'.
Sec. 21: pt. NW¼NE¼ below 610'.
Sec. 22: pt. W½NE¼ below 610'.
Sec. 23: pt. E½NW¼ below 610', pt. SW¼ NE¼ below 610', pt. NE¼SE¼ below 610', pt. S½SE¼ below 610'.
Sec. 24: pt. SW¼SW¼ below 610'.
Sec. 26: pt. NE¼SW¼ below 610', pt. SW¼ SW¼ below 610'.
Sec. 27: pt. SE¼NE¼ below 610', pt. NE¼ SE¼ below 610', pt. NE¼SW¼ below 610'.
Sec. 28: SW¼NW¼ below 610'.
Sec. 30: pt. S½SW¼ below 610', pt. SW¼ SE¼ below 610'.
Sec. 34: pt NW¼NW¼ below 610', pt. SE¼ SE¼ below 610'.
Sec. 35: pt. N½NW¼ below 610', pt. SW¼ NE¼ below 610', SE¼NE¼, pt. S½S½ below 610'.
Sec. 36: S½NW¼, SW¼NE¼, SW¼SW¼.
T. 1S., R.24W.,
Sec. 13: pt. SE¼SE¼ below 610'.
Sec. 23: pt. NE¼NE¼ below 610'.
Sec. 24: pt. SW¼NW¼ below 610'.
Sec. 25: pt. SE¼SE¼ below 610'.
Sec. 33: pt. N½SW¼ below 610'.

Garland County

T.2S.,R.20W.,
Sec. 18: fr. NE¼NW¼.
T.2S.,R.21W.,
Sec. 1: pt E½NW¼ below 610', pt. NE¼ SW¼ below 610', pt. S½SE¼ below 610'.
Sec. 2: pt. NE¼NW¼ below 610', pt. SW¼ NW¼ below 610', pt. W½SW¼ below 610', pt. N½NE¼ below 610', pt. N½SE¼ below 610'.
Sec. 3: pt. SE¼NW¼ below 610', pt. NW¼ SW¼ below 610', pt. NE¼SW¼ below 610', pt. SW¼NE¼ below 610', pt. E½ NE¼ below 610'.
Sec. 4: pt. N½SE¼ below 610'.
Sec. 6: W½NW¼ below 610'.
Sec. 7: pt. E½SE¼ below 610'.
Sec. 8: pt. SE¼NW¼ below 610', pt. SW¼ below 610', pt. SW¼NE¼ below 610', pt. NW¼SE¼ below 610'.
Sec. 9: pt. SE¼NW¼ below 610', N½NW¼ SW¼.
Sec. 10: pt. SE¼NW¼ below 610', pt. N½ SW¼ below 610', pt. NE¼below 610' N½SE¼ below 610'.
Sec. 11: pt. NW¼ below 610', SE¼NE¼ SW¼, pt. NE¼NE¼ below 610', pt. NW¼SW¼NE¼below 610', S½SE¼ SE¼SW¼NE¼, SE¼SW¼SE¼SW¼ NE¼, NE¼SE¼SE¼NE¼, S½S½SE¼ NE¼, S½NW¼SE¼SE¼NE¼, SW¼ SE¼, S½NW¼SE¼, NE¼NW¼SE¼, S½NW¼NW¼SE¼, NE¼NW¼NW¼ SE¼, S½NW¼NW¼NW¼SE¼.
Sec. 12: SE¼SW¼, SW¼SE¼, NE¼SE¼, pt. SE¼NE¼ below 610', S½SW¼ NW¼, S½NE¼SW¼NW¼, NE¼NE¼ SW¼NW¼, S½NW¼NE¼SW¼NW¼, S½S½NW¼SW¼NW¼, NE¼SE¼ NW¼SW¼NW¼, pt. NW¼NW¼ below 610'.
Sec. 17: pt. W½NW¼ below 610', pt. NW¼ SW¼ below 610', pt. SE¼NW¼ below 610', NW¼SE¼SE¼NE¼, pt. S½NE¼ below 610'.
Sec. 18: pt. W½SW¼ below 610', pt. NE¼ SW¼ below 610', pt. E½NE¼ below 610', pt. SW¼NE¼ below 610', pt. N½ NE¼ below 610'.
T.2S., R.22W.,
Sec. 4: S½SW¼, E½SE¼.
Sec. 7: Pt. S½ below 610'.
Sec. 8: pt. S½ below 610', SE¼NE¼.
Sec. 9: NE¼, NW¼SE¼, pt. N½SW¼ below 610'.
Sec. 10: NW¼SE¼, pt. SW¼SE¼ below 610', pt. S½SE¼SE¼ below 610', W½ NW¼SE¼SE¼.
Sec. 11: NW¼NE¼, SE¼SW¼.
Sec. 12: E½NE¼, NE¼SE¼.
Sec. 13: pt. S½NW¼ below 610', pt. S½S½ below 610', pt. S½NE¼ below 610', pt. N½S½ below 610'.
Sec. 14: pt. NW¼NW¼ below 610', pt. SE¼NW¼ below 610', pt. SW¼NE¼ below 610', pt. E½E½ below 610', pt. NE¼SW¼ below 610', pt. NW¼SE¼ below 610'.
Sec. 15: NW¼NW¼, pt. N½NE¼ below 610', pt. SE¼NW¼below 610', pt. SW¼ NE¼ below 610', pt. N½SW¼ below 610', pt. NW¼SE¼ below 610'.
Sec. 17: pt. W½NW¼ below 610'.
Sec. 18: pt. N½NE¼ below 610'.
Sec. 20: pt. SE¼NW¼ below 610', pt. NE¼ below 610', pt. N½SW¼ below 610', pt. NE¼SE¼ below 610', pt. SW¼SE¼ below 610'.
Sec. 21: pt. NW¼ below 610', pt. NW¼ NE¼ below 610', pt. N½SW¼ below 610', pt. NE¼SE¼ below 610', SW¼ SE¼.
Sec. 22: pt. N½SW¼ below 610', pt. NW¼ SE¼ below 610'.
Sec. 28: pt. NW¼NE¼ below 610'.
Sec. 29: pt. NW¼NE¼ below 610', pt. SE¼ NE¼ below 610'.

Montgomery County

T.2S.,R.23W.,
Sec. 1: N½SE¼, SW¼SW¼, SW¼SE¼.
Sec. 2: NW¼SE¼, SW¼NE¼, SE¼NW¼, pt. fr. N½NW¼ below 610'.
Sec. 8: pt. N½NW¼ below 610', pt. SE¼ NW¼ below 610', pt. S½NE¼ below 610'.
Sec. 10: SE¼NE¼.
Sec. 11: SE¼NE¼, E½SE¼.
Sec. 12: pt. NW¼ below 610' pt. NW¼ SW¼ below 610', S½SW¼SW¼, pt. E½ SW¼ below 610', pt. W½NE¼ below 610', pt. SE¼ below 610'.
Sec. 13: N½NW¼NW¼.
Sec. 14: NE¼NE¼.
Sec. 20: pt. NE¼SE¼ below 610'
Sec. 21: pt. fr. W½SW¼NW¼NW¼ below 610', pt. fr. W½W½SW¼NW¼ below 610', pt. fr. E¾NE¼NE¼ below 610', pt. fr. SE¼NE¼ below 610'.
Sec. 22: pt. NE¼NW¼ below 610' pt. NW¼SW¼ below 610'.

Lands transferred herein consists of approximately 9,369.05 acres.

Part 3—Lands withdrawn from the public domain for National Forest purposes by Presidential Proclamation and from all forms of appropriation by Public Land Order 628 (**Federal Register** 1/19/50), as modified by Public Land Order 4663 (**Federal Register** 5/22/69), in connection with the Lake Ouachita Project, as follows:

Fifth Principal Meridian

(Garland and Montgomery Counties, Arkansas)

Garland County

T.1N.,R.22W.,
Sec. 31: pt. NW¼SE¼ above 610', NE¼ NE¼.
Sec. 32: NW¼NW¼,NE¼SE¼, pt. SE¼ SE¼, above 610'.
Sec. 33: N½NW¼NW¼, pt. SW¼SW¼ above 610', E½NE¼, pt. E½SE¼ above 610'.
Sec. 34: N½NE¼, E½SE¼.
T.1S.,R.21W.,
Sec. 1: pt. SW¼SW¼ above 610'.
Sec. 10: NE¼SE¼, pt. SE¼NE¼ above 610' pt. SW¼SE¼ above 610'

Sec. 11: pt. NW¼NW¼ above 610', S½S½ SE¼, S½N½S½SE¼, N½NE¼SE¼ SE¼,NE¼NW¼SE¼SE¼.
Sec. 12: pt. SW¼NW¼ above 610', SE¼ NW¼, NE¼SW¼, S½SW¼, W½SE¼, SE¼NE¼, NE¼SE¼, N½SE¼SE¼.
Sec. 13: pt. NW¼NE¼ above 610', pt. NW¼ above 610'.
Sec. 14: pt. NW¼NE¼ above 610', NE¼ NE¼, pt. S½NW¼ above 610', SW¼ NE¼, pt. SE¼NE¼ above 610'.
Sec. 15: pt. NW¼ abpve 610', pt. NW¼ SE¼ above 610'.
Sec. 17: pt. SW¼NW¼ above 610', pt. N½ SW¼ above 610'.
Sec. 19: pt. N½NW¼ above 610', pt. NW¼ NE¼ above 610', pt. SE¼SW¼ above 610', pt. NE¼SE¼ above 610'.
Sec. 20: E½E½, W½SE¼, E½SW¼, pt. NW¼SW¼ above 610', pt. NE¼NW¼ above 610'.
Sec. 21: NW¼NW¼, pt. NE¼NW¼ above 610', pt. NW¼NE¼ above 610', pt. S½ NW¼ above 610', pt. SW¼ above 610'.
Sec. 22: pt S½SE¼ above 610'.
Sec. 23: pt. SW¼ above 610', pt. SE¼ NW¼, pt. S½NE¼, SE¼.
Sec. 24: S½NW¼, N½SW¼, SW¼SW¼, pt. SE¼SW¼ above 610', SE¼SE¼.
Sec. 25: pt. N½ above 610', pt. W½SW¼ above 610'.
Sec. 26: NW¼, pt. SW¼ above 610' pt. SE¼NE¼ above 610', N½NE¼, pt. SE¼ above 610', SW¼NE¼.
Sec. 27: SE¼SE¼, pt. N½ above 610', pt. NE¼SE¼ above 610', pt. SE¼SW¼ above 610', pt. SW¼SE¼ above 610'.
Sec. 28: pt. N½NW¼ above 610', pt. SE¼ NE¼ above 610'.
Sec. 29: N½NW¼, pt. S½NW¼ above 610', NW¼NE¼, pt. NE¼NE¼ above 610', pt. SW¼NE¼ above 610'.
Sec. 30: pt. SE¼NE¼ above 610', NE¼ NE¼.
Sec. 34: pt. NW¼NW¼ above 610'.
Sec. 35: pt. SE¼SE¼.
Sec. 36: pt. SE¼ above 610' pt. SW¼NW¼ SW¼ above 610'.

T. 1S., R. 22W.,

Sec. 2: N½NE¼, SW¼NE¼, N½SW¼, NW¼SE¼, SE¼SE¼, SE¼NW¼.
Sec. 3: NW¼SW¼.
Sec. 4: pt. SE¼SE¼ above 610', pt. SW¼ NW¼ above 610'.
Sec. 5: pt. NE¼SE¼ above 610', pt. N½ NW¼ above 610', pt. SE¼NW¼ above 610', pt. S½NE¼ above 610'.
Sec. 7: pt. W½SE¼ above 610'.
Sec. 8: pt. NE¼ above 610', pt. NW¼SE¼ above 610', pt. W½NE¼SE¼ above 610'.
Sec. 9: pt. N½NE¼ above 610', S½NE¼.
Sec. 10: SE¼NE¼, pt. W½SW¼NW¼ above 610', pt. W½E½SW¼NW¼ above 610', pt. S½S½SE¼NW¼ above 610', pt. S½SW¼NE¼ above 610', pt. E½SE¼SW¼NW¼ above 610'.
Sec. 11: SW¼NW¼.
Sec. 17: pt. W½NW¼ above 610', pt. SE¼ NW¼ above 610', pt. N½SW¼ above 610'.
Sec. 19: pt. E½NW½ above 610', pt. W½ NE¼ above 610', pt. NE¼SW¼ above 610'.
Sec. 21: pt. S½SW¼ above 610'.
Sec. 24: pt. S½NE¼ above 610'.
Sec. 25: pt. N½SW½ above 610'.
Sec. 26: pt. S½NW¼ above 610'.
Sec. 28: pt. N½NW¼ above 610', pt. NE¼ SW½ above. 610', pt. W½SE½ above 610'.
Sec. 33: pt. NE¼ above 610', pt. NW¼SE¼ above 610'.

Montgomery County

T. 1S., R., 23W.,

Sec. 2: E½NE¼, pt. W½NE¼ above 610'.
Sec. 11: pt. NE¼NE¼ above 610', pt. E½ NW¼NE¼ above 610', pt. NE¼SE¼ above 610', pt. S½SE¼ above 610', NE¼ NW¼.
Sec. 12: NW¼NW¼, pt. SW¼NW¼ above 610', pt. SW¼ above 610'.
Sec. 13: pt. S½SE½ above 610'.
Sec. 14: pt. N½NE¼ above 610', pt. SE¼ NE¼ above 610'.
Sec. 15: pt. SW¼SE¼ above 610'.
Sec. 18: NW¼NE¼, NE¼NW¼, SW¼ NW¼, W½SW¼.
Sec. 21: pt. NW¼NE¼ above 610'.
Sec. 22: pt. W½NE¼ above 610'
Sec. 23: pt. E½NW¼ above 610', pt. SW¼ NE¼ above 610', pt. NE¼SE¼ above 610', pt. S½SE¼ above 610'.
Sec. 24: pt. SW¼SW¼ above 610'.
Sec. 26: pt. NE¼SW¼ above 610', pt. SW¼ SW¼ above 610'.
Sec. 27: pt. SE¼NE¼ above 610', pt. NE¼ SE½ above 610', pt. NE¼SW¼ above 610'.
Sec. 30: pt. S½SW½ above 610', pt. SW¼ SE¼ above 610'.
Sec. 34: pt. NW¼NW¼ above 610', pt. SE¼SE¼ above 610'.
Sec. 35: pt. N½NW¼ above 610', pt. SW¼ SE¼, pt. S½S½ above 610'.

T. 1S.,R. 24W.,

Sec. 13: pt. SE¼SE¼ above 610'.
Sec. 23: pt. NE¼NE¼ above 610'.
Sec. 24: pt. SW¼NW¼ above 610'.
Sec. 25: pt. SE¼SE¼ above 610'.
Sec. 32: S½NE¼, N½SE¼, SE¼SE¼.
Sec. 33: pt. N½SW¼ above 610', N½SE¼.
Sec. 34: SE¼NW¼, NW¼SW¼.

Garland County

T.2S.,R.21W.,

Sec. 1: N½NE¼ above 610', pt. E½NW¼ above 610', pt. NE¼SW¼ above 610', pt. S½SE¼ above 610'.
Sec. 2: pt. NE¼NW¼ above 610', pt. SW¼ NW¼ above 610', pt. W½SW¼ above 610', pt. N½NE¼ above 610', pt. N½SE¼ above 610'.
Sec. 3: pt. SE¼NW¼ above 610', pt. NW¼ SW¼ above 610', SW¼SW¼, pt. NE¼ SW¼ above 610', pt. SW¼NE¼ above 610', pt. E½NE¼ above 610', NW¼SE¼.
Sec. 4: pt. N½SE¼ above 610', SE¼SE¼.
Sec. 7: pt. E½SE¼ above 610'.
Sec. 8: pt. SE¼NW¼ above 610', pt. SW¼ above 610', pt. SW¼NE¼ above 610', pt. NW¼SE¼ above 610', SW¼SE¼.
Sec. 9: pt. SE¼NW¼ above 610', S½NW¼ SW¼, SW¼SW¼, NE¼SW¼, SW¼ NE¼, N½SE¼, E½NE¼.
Sec. 10: N½NW¼,SW¼NW¼, pt. SE¼ NW¼ above 610', pt. N½SW¼ above 610', S½SW¼, pt. NE¼ above 610', pt. N½SE¼ above 610', S½SE¼.
Sec. 11: pt. NW¼ above 610', W½SW¼, N½NE¼SW¼, SW¼NE¼SW¼, N½ NW¼NW¼NW¼SE¼, pt. NE¼NE¼ above 610', pt. N½SW¼NE¼ above 610', N½S½SW¼NE¼, S½SW¼SW¼NE¼, N½S½SE¼SW¼NE¼, SW¼SW¼SE¼ SW¼NE¼, N½SE¼NE¼, N½SW¼ SE¼NE¼, N½NW¼SE¼SE¼NE¼.
Sec. 12: N½NW¼SW¼NW¼, N½SW¼ NW¼SW¼NW¼, NW¼SE¼NW¼ SW¼NW¼, N½NW¼NE¼SW¼NW¼, pt. NW¼NW¼ above 610', pt. SE¼NE¼ above 610'.
Sec. 17: pt. W½NW¼ above 610', pt. SE¼ NW¼ above 610', NE¼NW¼, pt. NW¼ SW¼, NE¼SW¼, pt. S½NE¼ above 610', N½NE¼.
Sec. 18: pt. W½SW¼ above 610', pt. NE¼ SW¼ above 610', SE¼SW¼, SE¼ NW¼, pt. SW¼NE¼ above 610', pt. E½ NE¼ above 610', pt. N½SE¼ above 610', S½SE¼.

T.2S.,R.22W.,

Sec. 7: pt. S½ above 610'.
Sec. 8: pt. S½ above 610'.
Sec. 9: pt. N½SW¼ above 610'.
Sec. 10: pt. SW¼SE¼ above 610', pt. S½ SE¼SE¼ above 610'.
Sec. 13: pt. S½S½ above 610', pt. S½NW¼ above 610', pt. S½NE¼ above 610', pt. N½S½ above 610'.
Sec. 14: pt. NW¼NW¼ above 610', pt. SE¼NW¼ above 610', pt. SW¼NE¼ above 610' pt. E½E½ above 610', pt. NE¼SW¼ above 610', pt. NW¼SE¼ above 610', S½SW¼, SW¼SE¼.
Sec. 15: pt. N½NE¼ above 610', pt. SE¼ NW¼ above 610', pt. SW¼NE¼ above 610', pt. N½SW¼ above 610', pt. NW¼ SE¼ above 610', S½SW¼, SE¼SE¼.
Sec. 17: pt. W½NW¼ above 610', S½NE¼, S½.
Sec. 18: pt. N½NE¼ above 610', NW¼, N½N½, S½SE¼, S½NE¼.
Sec. 19: SW¼NW¼, NW¼SE¼, SE¼ SE¼.
Sec. 20: NE¼NW¼, pt. NE¼ above 610', pt. N½SW¼ above 610', S½SW¼, NW¼SE¼, pt. NE¼SE¼ above 610', pt. SW¼SE¼ above 610', pt SE¼NW¼ above 610'.
Sec. 21: pt. NW¼ above 610', pt. NW¼ NE¼ above 610', NE¼NE¼, pt. N½ SW¼ above 610', pt. NE¼SE¼ above 610'.
Sec. 22: NE¼NE¼, S½N½, E½SE¼, pt. N½SW¼ above 610', pt. NW¼SE¼ above 610'.
Sec. 27: SW¼NW¼, SW¼.
Sec. 28: W½, pt. NW¼NE¼ above 610', SE¼.
Sec. 29: W½W½, pt. NW¼NE¼ above 610', SW¼NE¼, pt. SE¼NE¼ above 610', SE¼SW¼, SW¼SE¼.

Montgomery County

T. 2S., R. 23W.,

Sec. 2: pt. fr. N½NW¼ above 610'.
Sec. 8: pt. N½NW¼ above 610', pt SE¼ NW¼ above 610', NW¼NE¼, pt. S½ NE¼ above 610'.
Sec. 12: pt. NW¼ above 610', pt. NW¼ SW¼ above 610', N¾SW¼SW¼, pt. E½SW¼ above 610', pt. W½NE¼ above 610', pt. SE¼ above 610'.
Sec. 13: S½NW¼NW¼, SW¼NW¼, S½, E½NW¼, NE¼.
Sec. 14: E½SE¼, SE¼NE¼.
Sec. 20: pt. NE¼SE¼ above 610'.

Sec. 21: N½NW¼NW¼, pt. fr. W½NW¼NE¼NW¼, pt. fr. W½SW¼NW¼NW¼ above 610', pt. fr. W½W½SW¼NW¼ above 610', S½NW¼SW¼, pt. fr. NW¼NW¼SW¼, pt. fr. W½NE¼NW¼SW¼, S½S½NE¼SW¼, pt. fr. N½SW¼NE¼SW¼, pt. fr. NW¼SE¼NE¼SW¼, pt. fr. NE¼NE¼NE¼SW¼, E½SE¼, NE¼NW¼SE¼, N½NW¼NW¼SE¼, SE¼NW¼NW¼SE¼, N½SE¼NW¼SE¼, SE¼SE¼NW¼SE¼, pt. fr. E¾NE¼NE¼ above 610', pt. SE¼NE¼ above 610', pt. fr. S½SW¼NE¼.

Sec. 22: pt. NE¼NW¼ above 610', pt. NW¼SW¼ above 610', S½SW¼, NE¼SE¼.

Administrative rights are relinquished herein on lands totaling approximately 16,795.74 acres.

[FR Doc. 88-3473 Filed 2-24-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Intent To Prepare Environmental Impact Statement; McElmo Creek Salinity Control Plan; Colorado River Salinity Control Program; Colorado

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guildelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the McElmo Creek Salinity Control Plan in Montezuma County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, Diamond Hill Office Complex, Building A, 3rd Floor, 2490 W. 26th Avenue, Denver, Colorado 80211, telephone 303-964-0295.

SUPPLEMENTARY INFORMATION: As a result of comments received from a local draft environmental assessment review by cooperating agencies and others relating to irrigation induced wetlands, Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The recommended plan calls for the following structures and conservation practices to be installed on 21,500 acres of irrigated land to reduce salinity in the Colorado River Basin:

Irrigation Water Distribution Systems
Measuring Devices
Irrigation Sprinkler Systems
Wildlife Habitat Development and Enhancement (Wetland and Upland)

Actual acreage will vary depending on individual participation in the program. Participation would be voluntary and implemented through long-term contracts administered by the USDA Agricultural Stabilization and Conservation Service. Technical assistance for conservation planning, implementation of planned practices, assistance to realize irrigation water management objectives, and installation of wildlife practices would be provided by the Soil Conservation Service. A project team would consist of soil conservationists, an irrigation water management specialist, a biologist, engineers, engineering technicians, and soil conservation technicians. Additional irrigation water management assistance would be provided by the Cooperative Extension Service.

Other alternatives were investigated and include the following:

No Action
Irrigation Water Management
Irrigation Water Management and Ditch or Pipe Lining with Limited Sprinkler Systems
Irrigation Water Management and Ditch or Pipe Lining with Gravity Pressurized Sprinkler Systems
Ditch and Pipe Lining Only

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement.

No additional scoping meetings are planned. Previous meetings, comments, and meetings with commentors on the local draft environmental assessment review have scoped the issues that will be addressed in the environmental impact statement.

Sheldon G. Boone,

State Conservationist.

Date: February 5, 1988.

(Catalog of Federal Domestic Assistance Program No. 10.902, Conservation Operations Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 88-4003 Filed 2-24-88; 8:45 am]

BILLING CODE 3410-16-M

Finding of No Significant Impact; Kenduskeag Stream Watershed; Ponobscot County, ME

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Kenduskeag Stream Watershed, Penobscot County, Maine.

FOR FURTHER INFORMATION CONTACT: Charles Whitmore, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine 04473, telephone 207-581-3446.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Charles Whitmore, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection and water quality improvement. The planned works of improvement includes land treatment and pasture management systems, animal waste storage systems and sediment/nutrient detention basins. Thirty three farms and some 5400 acres of cropland will be involved in the project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Charles Whitmore.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisior s

of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Date: February 8, 1988.

Charles Whitmore,

State Conservationist.

[FR Doc. 88-4051 Filed 2-24-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Assistant Secretary for Administration

Export Now Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) and the General Services Administration rule on Federal Advisory Committee Management, 41 CFR 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Export Now Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary on the objectives and conduct of the Export Now program, including methods of increasing public awareness of the markedly improved climate for exporting and the opportunity to regain market share in the U.S. domestic market occasioned by the decline in the exchange rate of the dollar. In particular, the Committee will recommend strategies for improving the coordination and cooperation of federal, state, local and private sector export activities, with a view towards increasing the number of businesses and products actively and successfully involved in exporting. The Committee will also recommend methods of improving access to the technical assistance and financial services available to exporters. Additionally, the Committee will advise on the options for evaluating and developing the potentialities for economic growth through increased exports and recapture of the domestic market by firms located in areas of high unemployment.

The Committee will consist of approximately 50 members to be appointed by the Secretary to assure a balanced and diverse representation of interests in terms or region, company size, product or service, and points of view.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The Committee charter will be filed under the Act concurrently with the publication of this notice. The success of the Export Now initiative is dependent upon the Department of Commerce obtaining timely advice on these export related matters while the currency exchange rates are favorable. The possibility of rapid fluctuations in the exchange rates and other changes to the currently advantageous exporting climate makes it essential that the Committee be established and operating without delay. Therefore, although 15 days notice prior to the filing of the charter is not being provided, interested persons are invited to sumbit comments regarding the establishment of this committee to Lew W. Cramer, Executive Director, Export Now, Room 5835, U.S. Department of Commerce, Washington, DC., 20230. Telephone Number 337-1403.

Date: February 23, 1988.

Katherine M. Bulow,

Assistant Secretary for Administration.

[FR Doc. 88-4138 Filed 2-24-88; 8:45am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings/Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled public working meetings of its plan teams and committees, and a public hearing at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., Room 2079, Building 4, Seattle, WA, as follows:

Plan Team for the Gulf of Alaska Groundfish Fishery Management Plan (FMP)—will convene March 8-9, 1988, at 9 a.m., to review a working draft of the Amendment 17 package, which includes a proposal to change the sablefish fishing season.

Crab Plan Team—will convene March 10-11, 1988, at 9:00 a.m., to review the latest draft of the Bering Sea/Aleutian Islands King and Tanner Crab FMP, and its accompanying Environmental Assessment/Regulatory Impact Review.

Crab Management Committee—will convene March 24, 1988, at 9 a.m., to review the draft Bering Sea/Aleutian Islands King and Tanner Crab FMP package, prior to submission to the Council and public for review. In conjunction with this meeting, a public hearing has been scheduled for March 25, 1988, at 9 a.m., on 1988 shellfish management proposals. The Joint Statement of Principles between the North Pacific Council and the Alaska Board of Fisheries call for an annual public hearing to take testimony on proposals. Comments received will be forwarded to the North Pacific Council and the Board during their April meetings. Copies of proposals may be obtained from the Alaska Board of Fisheries, P.O. Box 3-2000, Juneau, AK 99802.

Bycatch Committee—will convene March 29-31, 1988, at 9 a.m., for an overview of potential impacts between Bering Sea trawl fisheries and molting king crab; an analysis of crab and halibut bycatch in the Kodiak Island area, and to continue development of a new "directed fishing" definition.

For further information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: February 19, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-4024 Filed 2-24-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; the Hyatt Regency Waikoloa Resort (P407)

On November 12, 1987, notice was published in the **Federal Register** (52 FR 43380) that an application had been filed by the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii 96743, for a permit to take eight (8) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display at the Hyatt Regency Waikoloa.

Notice is hereby given that on February 10, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein. Authorization to conduct a human/dolphin swim program was not granted.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: February 10, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Services.

[FR Doc. 88-4025 Filed 2-24-88; 8:45 am]

BILLING CODE 3510-22-M

Maine Mammals; Proposed Permit Modifications; Northwest and Alaska Fisheries Center, National Marine Fisheries Service (P77 #28)

Notice is hereby given that the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 7600 Sand Point Way, NE., Seattle, Washington 98115 has requested a modification to Permit No. 598 issued on July 17, 1987 (52 FR 27097), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to capture, handle, mark, tag and release up to 3,260 additional nothern fur seals (*Callorhinus ursinus*) during studies of survival, reproduction, feeding and physiological condition of the fur seal population in the eastern North Pacific Ocean; harass an unspecified number of fur seals during the course of on land observations, aerial and vessel surveys; and to modify Section A.3 to allow up to a total of 80 northern fur seals per year to be killed or injured during research activities.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request 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 request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

Dated: February 19, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-4026 Filed 2-24-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Susan H. Shane (P127C)

Notice is hereby given that on January 29, 1988 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: February 22, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-4028 Filed 2-24-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Ronald J. Schusterman (P410)

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:* Dr. Ronald Schusterman, Institute of Marine Science, University of California, Santa Cruz, California 95064.

2. *Type of Permit:* Scientific research.

3. *Name and Number of Marine Mammals:* California sea lion (*Zalophus californianus*) 100.

4. *Type of Take:* The sea lions will be observed, photographed, and video and audio recorded.

5. *Location of Activity:* San Nicholas Island, California.

6. *Period of Activity:* 1 year.

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 the 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 hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this 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 by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut

Avenue NW., Rm. 805, Washington, DC; and
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: February 11, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88–4027 Filed 2–24–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

February 22, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 22, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For any information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current limit for cotton textile products in Category 342, produced or manufactured in Sri Lanka.

Background

On May 15, 1987, a notice was published in the **Federal Register** (52 FR 18413) which announced import restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988. Subsequent directives published on January 4, 1988 amended these limits for two separate periods which began on June 1, 1987 and extended through December 31, 1987 and on January 1, 1988 and extends through May 31, 1988.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka, and at the request of the Government of Sri Lanka, the limit for Category 342 is being increased by application of swing for the period January 1, 1988 through May 31, 1988. The limit for Category 337 for the period June 1, 1987 through December 31, 1987 is being reduced to account for the swing applied to Category 342.

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, dated December 11, 1987).

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.

February 22, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Category 337, on June 1, 1987 and extended through December 31, 1987; and, in the case of Category 342, on January 1, 1988 and extends through May 31, 1988.

Effective on February 22, 1988, the directives of December 30, 1987 are hereby amended to adjust limits for cotton textile products in the following categories, as provided under the terms of the bilateral agreement of May 10, 1983, as amended [1]:

Category	Adjusted limit [1]
337	60,955 dozen
342	96,405 dozen

[1] The limits have not been adjusted to account for any imports exported after May 31, 1987 for Category 337 and December 31, 1987 for Category 342.

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. 88–4023 Filed 2–24–88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The bilateral agreement provides, in part, that: (1) specific limits and sublimits may be exceeded by certain designated percentages of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 88–C0001]

Patton Electric Company, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Patton Electric Company, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 11, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION:

Date: February 22, 1988.

Sheldon D. Butts,

Deputy Secretary.

[CPSC Docket No. 87–]

Settlement Agreement and Order

In the matter of Patton Electric Company, Inc., a corporation.

1. This Settlement Agreement and Order, entered into between Patton Electric Company, Inc., a corporation (hereinafter, "Patton"), and the staff of the Consumer Product Safety Commission, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. Parties

2. Patton is a corporation organized and existing under the laws of the State of Indiana with its principal corporate offices located at 15012 Edgerton Road, New Haven, Indiana 46774.

3. The staff is the staff of the Consumer Product Safety Commission, an independent regulatory agency established by Congress pursuant to section 5 of the CPSA, 15 U.S.C. 2053.

II. Jurisdiction

4. Patton has imported certain space heaters identified as the Model HF–10 space heater (Sears, Roebuck & Co. model No. 201.7208) (hereinafter, the "Model HF–10"), for sale to consumers. The Model HF–10 space heater is, therefore, a "consumer product" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

5. Patton imported and sold the Model HF–10 space heater to retailers, including Sears, Roebuck & Co., located throughout the United States. Patton is, therefore, a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a) (1), (4), and (11) of the CPSA, 15 U.S.C. 2052(a) (1), (4), and (11).

III. Product

6. The Model HF–10 is a portable electric space heater made with a plastic housing and grill. It has a suggested retail price of $34.95. Between August 15, 1983, and December 19, 1983, Patton imported approximately 148,302 units of the Model HF–10, and distributed approximately 102,000 units of the Model HF–10 under its own label and under the Sears, Roebuck & Co. label.

IV. Alleged Defect

7. The Model HF–10 space heater contains a diode assembly in the "slide-type" switch that controls the heat level of the space heater. The staff alleges that in certain intances, the diode fails in the "low heat mode"; and when the diode fails, it produces intense heat which caused some of the space heaters to catch fire. Consumers could suffer burn injuries or death as a result of the ignition of the space heater.

V. Alleged Failure to Comply With the Reporting Requirements

8. Patton reported the Model HF–10 space heater to the Commission pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b), on February 16, 1984. That report was made after Patton had received reports of 51 incidents involving the Model HF–10 space heater, and one day after the Commission staff had apprised Patton of a death involving the heater.

9. The staff alleges that Patton knew or should have known prior to February 16, 1984, that the Model HF–10 space heater contained a defect which could create a substantial product hazard, but Patton failed to report such information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VI. Allegations of Patton Electric Company, Inc.

10. Patton denies the staff's allegations that there is a defect in the Model HF–10 space heater. Patton further denies that the Model HF–10 contains a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a); and also denies the existence of any obligation to report any information regarding the Model HF–10 space heater to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b). Patton represents and warrants that it has provided to the Commission staff information concerning all consumer products which it manufacturers or distributes, or which it has manufactured or distributed, of which it has or had knowledge, that contained a safety related problem at the time of the signing of this Settlement Agreement by Patton.

VII. Agreement of the Parties

11. Patton and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

12. Patton agrees to pay the Commission a civil penalty in the amount of $90,000 under the following terms and conditions: payment of TEN THOUSAND DOLLARS ($10,000) on or before the close of business on the tenth (10th) day after final acceptance of this Settlement Agreement by the Commission, FORTY THOUSAND DOLLARS ($40,000) on or before the anniversary date in 1988, and FORTY THOUSAND DOLLARS ($40,000) on or before the anniversary date in 1989, of the final acceptance of this Settlement Agreement by the Commission; and execution and delivery of a promissory note on or before the close of business on the tenth (10th) day after final acceptance of this Settlement Agreement by the Commission, to ensure the enforceability of the agreement. These payments and promissory note are made in settlement of allegations by the staff that Patton violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), prior to the date of this Settlement and Order.

13. Patton makes no admission of, and expressly denies, any fault of liability regarding the HF–10 space heater. The Commission does not make any determination that the Model HF–10 contains a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

14. Upon final acceptance of this Settlement Agreement by the Commission, Patton knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's action, (3) to a determination by the Commission as to whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law.

15. Patton agrees to the issuance and distribution by the Consumer Product Safety Commission of the Settlement Agreement and Order, Final Order, and press release (appended hereto as "Exhibit A") involving this matter.

16. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the NINETY THOUSAND DOLLARS ($90,000) settlement amount by Patton, the Commission agrees to waive its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), for any failure to report the Model HF–10 or any other product of which Patton has informed the Commission prior to the date of the signing of the Settlement Agreement and Order by Patton.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement

Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. The parties further agree that the Order attached hereto as "Exhibit B" and incorporated herein by reference, shall be issued under the CPSA, 15 U.S.C. 2051 *et seq.*; and that a violation of the Order shall subject Patton to appropriate legal action.

19. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or contradict its terms.

Patton Electric Company.

Dated: November 23, 1987.

By:

Noel Thomas Patton,

Chief Executive Officer, Patton Electric Company, Inc.

Commission Staff.

Douglas L. Noble,

Acting Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Acting Director Division of Administrative Litigation.

Dated: December 7, 1987.

By:

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Counsel for the Commission staff.

Patton Settles Alleged Reporting Violation

Washington, DC.—The U.S. consumer Product Safety Commission today announced that Patton Electric Company, Inc., New Haven, Indiana, has agreed to pay the Commission $90,000 in settlement of Commission staff allegations that the company failed to report in a timely manner a defect in its Model HF–10 portable electric space heaters imported from Hong Kong in 1983.

The agency staff alleged that the HF–10 space heater contains a diode assembly that can fail in the "low heat mode." When the diode fails, it can produce intense heat which causes some of the space heaters to catch fire. Patton has denied all staff allegations.

Prior to notifying the Commission concerning this matter in February, 1984, Patton had received notification from consumers of 51 incidents involving various alleged problems associated with the Model HF–10 space heater. Patton reported one day after the staff informed the firm of a death of an 18 month old baby that was associated with the heater.

Patton imported from Hong Kong approximately 148,302 of the Model HF–10 space heaters between August, 1983, and December, 1983. They were sold to the public under the Patton name through various retailers and by Sears, Roebuck and Company under its name. A recall and repair program was voluntarily initiated by Patton for the HF–10 space heaters in early April, 1984.

For additional information, consumers can call the CPSC toll-free hotline number 800–638–CPSC. A teletypewriter for the hearing impaired is 800–638–8270.

[CPSC Docket No. 87–]

In the matter of Patton Electric Company, Inc., a corporation.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, that Patton Electric Company, Inc. shall pay to the Order of the United States Treasurer, the sum of NINETY THOUSAND AND 00/100 ($90,000.00), in full settlement of any and all claims whatsoever by the Consumer Product Safety Commission arising out of the allegations of the Commission staff which are set forth in the Settlement Agreement; said sum to be paid as follows:

a. TEN THOUSAND AND 00/100 DOLLARS ($10,000.00) on or before _____, 1988;

b. FORTY THOUSAND AND 00/100 DOLLARS ($40,000.00) on or before _____, 1989; and

c. FORTY THOUSAND AND 00/100 DOLLARS ($40,000.00) on or before _____, 1990; and it is hereby

Further Ordered, that concurrent with the payment of the first installment of $10,000 as set forth above, Patton Electric Company, Inc. shall execute in favor of the United States Treasurer a promissory note in the amount of EIGHTY THOUSAND AND 00/100 DOLLARS, ($80,000.00) due and payable without interest or penalties accruing before each of the respective due dates of each of the said installment payments. In the event of a default in the payment of either of the two installments of $40,000 each, the entire outstanding balance of the promissory note shall be due and payable; and interest thereon shall accrue daily at (1) the annual rate of 10 percent from the due date of the note, or the date of default on the note, whichever occurs first in time, to the date of a judgment on the note, and (2) the rate of interest on judgments after a judgment is entered upon default of the payment of the note until the date of satisfaction of the judgment.

Provisionally accepted on the 19th day of February, 1988.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88–4013 Filed 2–24–88; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 1, 1988; Tuesday, March 8, 1988; Tuesday, March 15, 1988; Tuesday, March 22, 1988; and Tuesday, March 29, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary rsponsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 22, 1988.

[FR Doc. 88-3990 Filed 2-24-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board; Meeting

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, March 31, and April 1, 1988, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC 20306-6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consulation, education and research. The Executive Secretary from whom substantive program information may be obtained is Colonel Lloyd A. Schlaeppi, Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306-6000, telephone 202-576-2900.

For the Director.

Lloyd A. Schlaeppi,

Colonel, MS, USA, Executive Officer.

[FR Doc. 88-3951 Filed 2-24-88; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Institute of Pathology Scientific Advisory Board; Subcommittee Meeting

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board's Subcommittee on April 12, 13 and 14, 1988, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC 20306-6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to research. The Executive Secretary from whom substantive program information may be obtained is Colonel Lloyd A. Schlaeppi, Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306-6000, telephone 202-576-2900.

For the Director.

Lloyd A. Schlaeppi,

Colonel, MS, USA, Executive Officer.

[FR Doc. 88-3952 Filed 2-24-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Navigation Improvement Project at McAlpine Locks and Dam, Louisville, KY

AGENCY: Louisville District, U.S. Army Corps of Engineers, DOD.

ACTION: Preparation of a Draft Environmental Impact Statement (DEIS).

SUMMARY: The navigation improvement project considered by the DEIS consists of the construction of a replacement lock at McAlpine Locks and Dam located at Ohio River mile 606.8. Alternates being considered are: rehabilitation of the existing 600 ft. lock, construction of a new 600 ft. lock at the location of the existing 600 ft. lock, replacement of the 600 ft. lock with a 1200 ft. lock, replacement of the 360 ft. lock with a 600 ft. lock, replacement of the 360 ft. lock with a 1200 ft. lock, and construction of a new 1200 ft. lock through the original locks of alignment. This last alternative would require new excavation through the adjacent land features, Shippingport Island and Sand Island.

The DEIS will cover a variety of issues including water quality, aquatic biology, terrestrial biology, economics, and recreation. The entire McAlpine Locks and Dam facility is included within the area designated the Falls of the Ohio National Wildlife Conservation Area. The DEIS will analyze impacts on this area, e.g., the potential use of a portion of Shippingport Island as a spoils disposal area.

A scoping meeting will be held in April 1988. A public notice providing the time, date, and location of this meeting will be distributed at least 15 days prior to the date of the meeting. The purpose of the meeting is to identify the significant issues to be analyzed in depth in the DEIS. The participation of the public and all interested government agencies is invited.

DATE: The Louisville District estimates that the DEIS will be released for public review in August 1988.

ADDRESS: Questions about the proposed action or comments regarding significant issues that should be considered in the DEIS should be directed to: Robert L. Oliver, Colonel, Corps of Engineers, 600 Federal Place, P.O. Box 59, Louisville, Kentucky 40201-0059. Phone: (502) 582-5601.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-3953 Filed 2-24-88; 8:45 am]

BILLING CODE 3710-JB-M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Meeting

AGENCY: Education Department.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: March 14, 1988—9:00 a.m. to 4:00 p.m.

ADDRESS: Channel Inn Motel, 650 Water Street, Southwest, Washington, DC, (202) 554-2400.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1986, Pub. L. 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda:

The proposed agenda will include: Committee Reports, Annual Report Review, Review of past projects, Future Activities.

Part I: General Council business, Part II: items to be included in this Council meeting will be: For additional information pertaining to these issues contact the following:

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street SW., Suite 4080, Washington, DC 20202, (202) 732–1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, February 19, 1988.

Joyce Winterton,

Executive Director.

[FR Doc. 88–4021 Filed 2–24–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7037–004 Washington]

Public Utility District No. 1 of Okanogan County; Surrender of Preliminary Permit

February 22, 1988.

Take notice that Public Utility District No. 1 of Okanogan County, Washington, permittee for the Shankers Bend Project No. 7037, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7037 was issued July 30, 1986, and would have expired June 30, 1989. The project would have been located on the Similkameen River in Okanogan County, Washington.

The permittee filed the request on January 29, 1988, and the preliminary permit for Project No. 7037 shall remain in effect through the thirtieth day after issuance of the notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–4041 Filed 2–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7753–005]

Glenn-Colusa Irrigation District; Surrender of Conduit Exemption

February 22, 1988.

Take notice that Glenn-Colusa Irrigation District, exemptee for the proposed Williams Cross-tie Project No. 7753, has requested that its exemption be terminated. The exemption was issued March 30, 1984. The project would have been located on the Tehama-Colusa Canal in Colusa County, California. Construction of the project has not commenced.

The exemptee filed the request on February 8, 1988, and the exemption for Project No. 7753 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–4039 Filed 2–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6788–003 Idaho]

Dan D. Hudson; Surrender of Exemption

February 22, 1988.

Take notice that Dan D. Hudson, exemptee for the proposed Deep Creek Hydroelectric Project No. 6788, requested by letter dated February 5, 1988, that his exemption be terminated. The exemption was issued on April 11, 1983. The project would have been located on Deep Creek near Buhl in Twin Falls County, Idaho. There has been minor land disturbing activity which has been returned to its original state by natural vegetation.

The exemptee filed the request on February 5, 1988, and the exemption for Project No. 6788 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–4040 Filed 2–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–57–000]

North Penn Gas Co.; Petition for Authority To Institute Direct Billing Procedure To Recover Order No. 473 Costs

February 19, 1988.

Take notice that on February 12, 1988, North Penn Gas Company (North Penn) filed a petition for authority to implement a direct billing mechanism to recover Order No. 473 costs. North Penn states that it seeks authorization to directly bill and recover from each wholesale customer Order No. 473 costs to match cost responsibility with customer purchases. North Penn proposes to allocate such costs based upon each customer's share of North Penn's total sales for the period during which the Order No. 473 obligation arose and to bill directly the resulting amounts, including carrying charges and accrued interest. North Penn stresses that its recovery proposal is applicable to Corning Natural Gas Corporation (Corning).

North Penn requests that the Commission require the joinder of Corning and CNG Transmission Corporation (CNG) as indispensible parties and that the instant docket be consolidated with CNG's PGA Docket No. TA88–1–22, unless the Commission determines in that docket that CNG lacks authority to bill directly Order No. 473 costs.

North Penn requests wavier of Commission regulations, rules and orders to the extent necessary to permit the proposed direct billing mechanism.

North Penn states that it has served a copy of the petition on CNG, North Penn's wholesale customers (including Corning), interested state commissions, other parties normally served with North Penn's PGA filings and with the participants in *Consolidated Gas Transmission Corp.*, Docket No. CP87–195 and *CNG Transmission Corp.*, Docket No. TA88–1–22. North Penn also requests expenditious Commission consideration of the petition.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825

North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 26, 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. 88-4042 Filed 2-24-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59840; FRL-3333-9]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 52 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88-38—November 22, 1987.
Y 88-39, 88-40, and 88-41—November 24, 1987.
Y 88-42, 88-43, and 88-44—November 29, 1987.
Y 88-45, 88-46, and 88-47—November 30, 1987.
Y 88-48 and 88-49—December 2, 1987.
Y 88-50, 88-51, 88-52, 88-53, and 88-54—December 7, 1987.
Y 88-55 and 88-56—December 13, 1987.
Y 88-57 and 88-58—December 14, 1987.
Y 88-59, 88-60, 88-61, and 88-62—December 15, 1987.
Y 88-63—December 20, 1987.
Y 88-64, 88-65, 88-66, and 88-67—December 21, 1987.
Y 88-68—December 22, 1987.
Y 88-69—December 23, 1987.
Y 88-70—December 29, 1987.
Y 88-71 and 88-72—January 3, 1988.
Y 88-73—January 4, 1988.
Y 88-74—January 5, 1988.
Y 88-75—January 7, 1988.
Y 88-76—January 10, 1988.
Y 88-77—January 13, 1988.
Y 88-78, 88-79, 88-87, 88-88, and 88-89—January 18, 1988.
Y 88-90—January 25, 1988.
Y 88-91 and 88-92—January 26, 1988.
Y 88-93 and 88-94—February 1, 1988.
Y 88-95 and 88-96—February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Publication of the required notices for these PMNs was delayed due to internal administrative problems which have now been corrected.

Y 88-38

Importer. Confidential.
Chemical. (G) Styrene-2-ethylhexyl acrylate copolymer.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

Y 88-39

Manufacture. Confidential.
Chemical. (G) Unoleic epoxy ester resin.
Use/Production. (G) Protective coatings. Prod. range: 9,100 kg/yr.

Y 88-40

Manufacture. Confidential.
Chemical. (G) Linseed and soya-oil-based terphthalic alkyd.
Use/Production. (S) Printing ink vehicle. Prod. range: 30,000 kg/yr.

Y 88-41

Manufacturer. NL Industries, Inc.
Chemical. (G) Short oil length water dispersible alkyd resin.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 88-42

Manufacture. Matrix Medica, Inc.
Chemical. (G) Polyether urethane urea of diphenylmethanediisocyanate, polytetramethylene ether glycol, polyethylene glycol, and organic amines.
Use/Production. (S) Polymer. Prod. range: Confidential.

Y 88-43

Manufacture. Matrix Medica, Inc.
Chemical. (G) Polyether urethane urea of diphenylmethanediisocyanate, polytetramethylene ether glycol, polyethylene, glycol, and organic amines.
Use/Production. (S) Polymer. Prod. range: Confidential.

Y 88-44

Manufacturer. Matrix Medica, Inc.
Chemical. (G) Polyether urethane urea of diphenylmethane-diisocyanate, polytetramethylene ether glycol, polyethylene glycol, and organic amines.
Use/Production. (S) Polymer. Prod. range: Confidential.

Y 88-45

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane containing hydrogen groups.
Use/Import. (S) Coatings prepolymer. Import use: Confidential.

Y 88-46

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

Y 88-47

Manufacturer. Confidential.
Chemical. (G) Modified phenolic resin.
Use/Production. (G) Ink manufacturing resin. Prod. range: Confidential.

Y 88-48

Manufacturer. General Electric Company.
Chemical. (G) Poly(aryletherimide) resin.
Use/Production. (S) Engineering thermoplastic parts. Prod. range: Confidential.

Y 88-49

Manufacturer. General Electric Company.
Chemical. (G) Poly(ethersulfoneimide) resin.

Use/Production. (S) Engineering Thermoplastic parts. Prod. range: Confidential.

Y 88–50

Manufacturer. S.C. Johnson and Son, Inc.
Chemical. (G) Salt of acrylic copolymer.
Use/Production. (G) Adhesive. Prod. range: Confidential.

Y 88–51

Manufacturer. S.C. Johnson and Son, Inc.
Chemical. (G) Salt of acrylic copolymer.
Use/Production. (G) Adhesive. Prod. range: Confidential.

Y 88–52

Manufacturer. S.C. Johnson and Son, Inc.
Chemical. (G) Salt of acrylic copolymer.
Use/Production. (G) Adhesive. Prod. range: Confidential.

Y 88–53

Manufacturer. S.C. Johnson and Son, Inc.
Chemical. (G) Salt of adhesive copolymer.
Use/Production. (G) Adhesive. Prod. range: Confidential.

Y 88–54

Manufacturer. Confidential.
Chemical. (G) Styrene copolymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 88–55

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyether urethane.
Use/Production. (G) Coatings ingredient. Prod. range: Confidential.

Y 88–56

Manufacturer. Confidential.
Chemical. (G) Acrylic resin solution.
Use/Production. (G) Resin for paint manufacture. Prod. range: Confidential.

Y 88–57

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Alkyl polyester polysiloxanes.
Use/Import. (G) Open, nondispersive use. Import range: 50,000 kg/yr.

Y 88–58

Manufacturer. Confidential.
Chemical. (G) Norbornene copolymer.
Use/Production. (G) Binder. Prod. range: Confidential.

Y 88–59

Manufacturer. Scopa Industries of America, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (S) Manufacture printing ink varnish. Prod. range: Confidential.

Y 88–60

Manufacturer. Confidential.
Chemical. (G) Polyester containing neopentyl glycol.
Use/Production. (G) Coating. Prod. range: 220,000 kg/yr.

Y 88–61

Manufacturer. Confidential.
Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid and a diol.
Use/Production. (G) Intermediate. Prod. range: Confidential.

Y 88–62

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyether urethane.
Use/Production. (G) Coatings. Prod. range: Confidential.

Y 88–63

Manufacturer. Owens-Corning Fiberglas Corporation.
Chemical. (G) Saturated polyester resin.
Use/Production. (S) Molding resin. Prod. range: Confidential.

Y 88–64

Manufacturer. Schnee-Morehead, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Polymeric binder. Prod. range: Confidential.

Y 88–65

Manufacturer. Schnee-Morehead, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Polymeric binder. Prod. range: Confidential.

Y 88–66

Manufacturer. Schnee-Morehead, Inc.
Chemical. (G)Acrylic copolymer.
Use/Production. (S) Polymeric binder. Prod. range: Confidential.

Y 88–67

Manufacturer. Schnee-Morehead, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Polymeric binder. Prod. range: Confidential.

Y 88–68

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Epoxyresin polyamide copolymer.
Use/Import. (S) Open. Import range: Confidential.

Y 88–69

Manufacturer. Alco Chemical Corporation.
Chemical. (G) Sodium polyacrylate; acrylate copolymer salt, vinylic copolymer.
Use/Production. (G) Thickening compound. Prod. range: Confidential.

Y 88–70

Manufacturer. General Electric Company.
Chemical. (G) Polyphenylene oxide-nylon 6 copolymer.
Use/Production. (G) Thermoplastic molding resin. Prod. range: Confidential.

Y 88–71

Manufacturer. Confidential.
Chemical. (G) Coconut fatty acids alkyd.
Use/Production. (G) Metal coating. Prod. range: Confidential.

Y 88–72

Manufacturer. Confidential.
Chemical. (G) Polymer of dimer fatty acid and ethylenediamine, 1, 2-phenylenediamine, trimethylhexamethylenediamine, and propionic acid.
Use/Production. (S) Ink resin. Prod. range: 60,000 kg/yr.

Y 88–73

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

Y 88–74

Importer. Confidential.
Chemical. (G) Castor oil modified alkyd resin.
Use/Import. (G) Coatings. Import range: Confidential.

Y 88–75

Importer. Confidential.
Chemical. (G) Polyglycol carbonate.
Use/Import. (G) Plastic manufacture. Import range: Confidential.

Y 88–76

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd resin.
Use/Production. (S) Finishes. Prod. range: Confidential.

Y 88–77

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer, ammonium salt.
Use/Production. (S) Coatings. Prod. range: Confidential.

Y 88-78

Manufacturer. S.C. Johnson and Son, Inc.
Chemical. (G) Acrylic copolymer emulsion.
Use/Production. (G) Film former. Prod. range: Confidential.

Y 88-79

Manufacturer. S.C. Johnson and Son, Inc.
Chemical. (G) Water-dispersible polymeric emulsion.
Use/Production. (G) Coatings. Prod. range: Confidential.

Y 88-87

Manufacturer. Confidential.
Chemical. (G) Polyester of aromatic and aliphatic dibasic acids.
Use/Production. (S) Marble gel coat. Prod. range: 450,000 kg/yr.

Y 88-88

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Protective coatings. Prod. range: 102,500 kg/yr.

Y 88-89

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Protective coatings. Prod. range: Confidential.

Y 88-90

Manufacturer. Confidential.
Chemical. (G) Vinyl copolymer acrylate mixed potassium and sodium salt; modified mixed potassium and sodium polyacrylate.
Use/Production. (G) Dispersant in oil field. Prod. range: Confidential.

Y 88-91

Manufacturer. Essex Specialty Products.
Chemical. (G) Acrylic terpolymer resin.
Use/Production. (S) Resin solution for adhesives. Prod. range: Confidential.

Y 88-92

Manufacturer. Essex Specialty Products, Inc.
Chemical. (G) Acrylic grafted polyurethane resin solution.
Use/Production. (S) Resin solution for additives. Prod. range: Confidential.

Y 88-93

Manufacturer. C.J. Osborn, Division of Suvar Corporation.
Chemical. (G) VT Copolymer.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

Y 88-94

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (S) Protective coatings. Prod. range: 3,750 kg/yr.

Y 88-95

Manufacturer. Confidential.
Chemical. (G) PMS copolymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 88-96

Manufacturer. Confidential.
Chemical. (G) Vinyltoluene copolymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Date: February 17, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-4032 Filed 2-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51701; FRL-3334-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices; Takasago USA, Inc., et al

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 188 such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 88-172, 88-173, 88-174, and 88-175—Janaury 27, 1988.
P 88-176, 88-177, 88-178—January 30, 1988.
P 88-179, 88-180, 88-181, 88-182, 88-183, 88-184, 88-185, 88-186, 88-187, 88-188, and 88-189—January 31, 1988.
P 88-190, 88-191, 88-192, 88-193, and 88-194—February 1, 1988.
P 88-195, 88-196, 88-197, 88-198, and 88-199—February 2, 1988.
P 88-200 and 88-201—February 3, 1988.
P 88-202—February 6, 1988.
P 88-203, 88-204, 88-205, 88-206, 88-207, 88-208, 88-209, 88-210, 88-211, 88-212, 88-213, and 88-214—February 7, 1988.
P 88-215, 88-216, 88-217, 88-218, 88-219, 88-220, 88-221, 88-222, 88-223, 88-224, 88-225, 88-226, 88-227, and 88-228—February 9, 1988.
P 88-229, 88-230, 88-231, 88-232, and 88-233—February 10, 1988.
P 88-234, 88-235, 88-236, 88-237, 88-238, 88-239, 88-240, 88-241, 88-242, 88-243, 88-244, 88-245, 88-246, 88-247, 88-248, and 88-249—February 13, 1988.
P 88-250, 88-251, 88-252, 88-253, 88-254, 88-255, 88-256, 88-257, 88-258, 88-259, 88-260, 88-261, 88-262, 88-263, and 88-264—February 14, 1988.
P 88-265, 88-266, 88-267, 88-268, and 88-269—February 15, 1988.
P 88-270, 88-271, and 88-272—February 16, 1988.
P 88-273 and 88-274—February 17, 1988.
P 88-275, 88-276, 88-277, 88-278, 88-279, 88-280, and 88-281—February 20, 1988.
P 88-282, 88-283, 88-284, 88-285, 88-286, 88-287, 88-288, 88-289, 88-290, 88-291, 88-292, 88-293, 88-294, 88-295, and 88-296—February 21, 1988.
P 88-301, 88-302, and 88-303—February 22, 1988.
P 88-304, 88-305, and 88-306—February 24, 1988.
P 88-307 and 88-308—Febraury 27, 1988.
P 88-309—February 24, 1988.
P 88-310—February 27, 1988.
P 88-311, 88-312, 88-314, 88-315, 88-316, 88-317, 88-318, 88-319, 88-320, and 88-321—February 28, 1988.
P 88-322, 88-323, 88-324, 88-325, 88-326, and 88-327—February 29, 1988.
P 88-328 and 88-329—March 1, 1988.
P 88-330—February 29, 1988.
P 88-331—March 1, 1988.
P 88-333—February 22, 1988.
P 88-334 and 88-335—March 2, 1988.
P 88-336 and 88-337—March 5, 1988.
P 88-338—March 6, 1988.
P 88-339, 88-340, 88-341, and 88-342—March 5, 1988.
P 88-343, 88-344, 88-345, 88-346, 88-347, 88-348, 88-349, 88-350, 88-351, 88-352, 88-353, 88-354, and 88-355—March 6, 1988.
P 88-356—March 7, 1988.
P 88-357 and 88-358—March 6, 1988.
P 88-363, and 88-364—March 7, 1988.
P 88-366—March 6, 1988.
P 88-367, and 88-368—March 7, 1988.
P 88-373 and 88-374—March 8, 1988.

Written comments by:

P 88-172, 88-173, 88-174, 88-175—December 28, 1987.
P 88-176, 88-177, and 88-178—December 31, 1987.
P 88-179, 88-180, 88-181, 88-182, 88-183, 88-184, 88-185, 88-186, 88-187, 88-188, and 88-189—January 1, 1988.
P 88-190, 88-191, 88-192, 88-193, and 88-194—January 2, 1988.
P 88-195, 88-196, 88-197, 88-198, and 88-199—January 3, 1988.
P 88-200 and 88-201—January 4, 1988.
P 88-202—January 7, 1988.

P 88-203, 88-204, 88-205, 88-206, 88-207, 88-208, 88-209, 88-210, 88-211, 88-212, 88-213, and 88-214—January 8, 1988.
P 88-215, 88-216, 88-217, 88-218, 88-219, 88-220, 88-221, 88-222, 88-223, 88-224, 88-225, 88-226, 88-227, and 88-228—January 10, 1988.
P 88-229, 88-230, 88-231, 88-232, and 88-233—January 11, 1988.
P 88-234, 88-235, 88-236, 88-237, 88-238, 88-239, 88-240, 88-241, 88-242, 88-243, 88-244, 88-245, 88-246, 88-247, 88-248, and 88-249—January 14, 1988.
P 88-250, 88-251, 88-252, 88-253, 88-254, 88-255, 88-256, 88-257, 88-258, 88-259, 88-260, 88-261, 88-262, 88-263, and 88-264—January 15, 1988.
P 88-265, 88-266, 88-267, 88-268, and 88-269—January 16, 1988.
P 88-270, 88-271, and 88-272—January 17, 1988.
P 88-273 and 88-274—January 18, 1988.
P 88-275, 88-276, 88-277, 88-278, 88-279, 88-280, and 88-281—January 21, 1988.
P 88-282, 88-283, 88-284, 88-285, 88-286, 88-287, 88-288, 88-289, 88-290, 88-291, 88-292, 88-293, 88-294, 88-295, and 88-296—January 22, 1988.
P 88-301, 88-302, and 88-303—January 23, 1988.
P 88-304, 88-305, and 88-306—January 25, 1988.
P 88-307 and 88-308—January 28, 1988.
P 88-309—January 25, 1988.
P 88-310—January 28, 1988.
P 88-311, 88-312, 88-314, 88-315, 88-316, 88-317, 88-318, 88-319, 88-320, and 88-321—January 29, 1988.
P 88-322, 88-323, 88-324, 88-325, 88-326, and 88-327—January 30, 1988.
P 88-328 and 88-329—January 31, 1988.
P 88-330—January 30, 1988.
P 88-331—January 31, 1988.
P 88-333—January 23, 1988.
P 88-334 and 88-335—February 1, 1988.
P 88-336 and 88-337—February 4, 1988.
P 88-338—February 5, 1988.
P 88-339, 88-340, 88-341, and 88-342—February 4, 1988.
P 88-343, 88-344, 88-345, 88-346, 88-347, 88-348, 88-349, 88-350, 88-351, 88-352, 88-353, 88-354, and 88-355—February 5, 1988.
P 88-356—February 6, 1988.
P 88-357 and 88-358—February 5, 1988.
P 88-363 and 88-364—February 6, 1988.
P 88-366—February 5, 1988.
P 88-367 and 88-368—February 6, 1988.
P 88-373 and 88-374—February 7, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-51701)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Publication of the required notices for these PMNs was delayed due to internal administrative problems which have now been corrected.

P 88-172

Importer. Takasago USA, Inc.
Chemical. (S) Trimethylnorbornyl-2-methylcyclohexanol.
Use/Import. (S) Perfume. Import range: 3,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 6.2 mL/kg species (Rat).
Skin irritation: Negligible, species (guinea pig).
Mutagenicity: Negative.
Phototoxicity: Negative, species (guinea pig).

P 88-173

Importer. Dynamit Nobel Chemicals.
Chemical. (S) Aminophenyltrimethoxyaniline.
Use/Import. (S) Polymer additive. Import range: 2,000 kg/yr.

P 88-174

Manufacturer. Chemdesign Corporation.
Chemical. (G) Ester of diazonaphthoquinone.
Use/Production. (G) Photoimaging chemical. Prod. range: Confidential.

P 88-175

Importer. Dynamit Chemicals.
Chemical. (S) 3-Aminopropyltris(2-methoxyethoxy)silane.
Use/Import. (S) Adhesive promoter. Import range: 4,000 kg/yr.

P 88-176

Importer. Takasago USA, Inc.
Chemical. (S) -Dimethyl-3,4-methylenedioxyhydrocinnamic aldehyde.
Use/Import. (S) Perfume. Import range: 1,000-2,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 3,300 mg/kg species (rat).
Skin irritation: Negligible, species (guinea pig).
Mutagenicity: Negative.
Skin sensitization: negative, species (guinea pig).

P 88-177

Importer. Takasago USA, Inc.
Chemical. (S) 2,4-Di-*tert*-butylcyclohexanone.
Use/Import. (S) Perfume. Import range: 2,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 15,000 mg/kg species (rat).
Skin irritation: Negligible, species (guinea pig).
Mutagenicity: Negative.
Photoallergenicity: Negative.

P 88-178

Importer. Takasago International Corp.
Chemical. (S) 1,1-Bis (*p*-diethylaminophenyl)-4,4-diphenyl-1,3-butadiene.
Use/Import. (S) Electrophotographic photoconductor. Import range: 3,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (rat).
Skin irritation: Negligible, species (guinea pig).
Mutagenicity: Negative.

P 88-179

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) General laminating adhesive. Import range: Confidential.

P 88-180

Manufacturer. Uniroyal Chemical Co., Inc.
Chemical. (G) Polyester polyol terminated toluenediisocyanate polymer.
Use/Production. (S) Molding sheets. Prod. range: Confidential.

P 88-181

Importer. Confidential.
Chemical. (G) Fiber-reactive Dye.
Use/Import. (S) Reactive Dye. Import range: 40,000 kg/yr.

P 88-182

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) General laminating adhesive. Import range: Confidential.

P 88-183

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane.
Use/Import. (S) General laminating adhesive. Import range: Confidential.

P 88-184

Manufacturer. SSC Industries, Inc.

Chemical. (G) 2-Butenedioic acid, dioctyl ester, polymer with vinyl acetate and 2-hydroxypropyl methacrylate.
Use/Production. (S) Antifuraming ingredient. Prod. range: 2,700 kg/yr.

P 88–185

Manufacturer. King Industries, Inc.
Chemical. (G) Carbamic acid ester.
Use/Production. (S) Reactive diluent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg, species (rat).
Acute dermal toxicity: LD50 >2 g/kg, species (rabbit).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Skin sensitization: Negative, species (guinea pig).

P 88–186

Manufacturer. Confidential.
Chemical. (S) Soybean oil, pentaerythritol, chlorendic anhydride alkyd resin.
Use/Production. (S) Coating component. Prod. range: 780,000 kg/yr.

P 88–187

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Hydrocarbon resin dispersion.
Use/Production. (S) Tackifier resin. Prod. range: Confidential.

P 88–188

Importer. Confidential.
Chemical. (G) Fiber-reactive dye.
Use/Import. (S) Reactive Dye. Import range: 40,000 kg/yr.

P 88–189

Importer. Confidential.
Chemical. (G) Toluenediisocyanate prepolymer.
Use/Import. (G) Polyurethane reactant. Import range: Confidential.

P 88–190

Importer. Confidential.
Chemical. (G) Aqueous polymeric dispersion.
Use/Import. (S) Metal primer component. Import range: 3,768 kg/yr.

P 88–191

Manufacturer. E.I. DuPont deNemours and Co. Inc.
Chemical. (G) Nylon salt.
Use/Production. (A) Polyamide intermediate. Prod. range: Confidential.

P 88–192

Manufacturer. E.I. DuPont deNemours and Company, Inc.
Chemical. (G) Polyamide resin.
Use/Production. (G) Plastic parts. Prod. range: Confidential.

P 88–193

Manufacturer. Confidential.
Chemical. (S) Dicyclopentadiene, dimerized fatty acids, fumaric acids, resin.
Use/Production. (S) Printing ink vehicle. Prod. range: 3,700,000 kg/yr.

P 88–194

Importer. Confidential.
Chemical. (S) Acetaldehyde, phosphorus trichloride, oxide polycondensate.
Use/Import. (S) Flame retardant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,689 mg/kg, species (rat).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.

P 88–195

Manufacturer. Fritzsch Dodge and Olcott.
Chemical. (S) 2-[(3-(*p*-Methylphenyl)-2-methylpropylidene)amino]-benzoic acid, methyl ester.
Use/Production. (S) Fragrance compound component. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat).
Mutagenicity: Negative.
Skin sensitization: Positive, species (guinea pig).

P 88–196

Importer. Confidential.
Chemical. (G) Thiadiazole derivative.
Use/Import. (S) Lubricant additive. Import range: Confidential.

P 88–187

Importer. DNP (America), Inc., New York Home Office.
Chemical. (G) Indophenol derivative.
Use/Import. (S) Dye. Import range: 20–100 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.

P 88–198

Importer. Confidential.
Chemical. (G) Metal complexed, substituted azo compound.
Use/Import. (S) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat).
Skin irritation: Slight, species (rabbit).

P 88–199

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified polyethylene.
Use/Production. (G) Film. Prod. range: Confidential.

P 88–200

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Dispersive coating. Prod. range: 200,000 kg/yr.

P 88–201

Manufacturer. Confidential.
Chemical. (G) Metal phosphide.
Use/Production. (S) Conductive pigment. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >21.5 mg/kg, species (rat).
Acute dermal toxicity: LD50 >10 mg/kg.

P 88–202

Manufacturer. Confidential.
Chemical. (G) Epoxidized polybutadiene.
Use/Production. (S) Coatings, adhesives, inks. Prod. range: Confidential.

P 88–203

Manufacturer. Confidential.
Chemical. (S) Dicyclopentadione, dimerized fatty acids, fumaric acid, acrylic acid resin.
Use/Production. (S) Printing ink vehicle. Prod. range: 3,700,000 kg/yr.

P 88–204

Manufacturer. Confidential.
Chemical. (G) Acrylate methacrylate polymer with methyl methacrylate.
Use/Production. (G) Dispersive coating. Prod. range: 690,000 kg/yr.

P 88–205

Importer. Confidential.
Chemical. (G) Direct dye.
Use/Import. (G) Dye. Import range: Confidential.

P 88–206

Manufacturer. Confidential.
Chemical. (S) 2-Methyl-1,5-pentamethylenediamine tetrakis(methylenephosphonic acid).
Use/Production. (S) Scale inhibitor. Prod. range: 54,000 kg/yr.

P 88–207

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.

Use/Production. (G) Coating resin. Prod. range: Confidential.

P 88–208

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Substituted aryl aliphatic amine.
Use/Production. (S) Hardener for coating. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat).
Skin irritation: Strong, species (rabbit).

P 88–209

Importer. Confidential.
Chemical. (G) Diamine salt of a substituted aromatic diacid.
Use/Import. (G) Fabric modifier. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Static acute toxicity: time LC50 96-hr >500 mg/L, species (Golden Orfe).

P 88–210

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Fiber-reactive monoazo dyestuff.
Use/Production. (G) Fiber dye. Prod. range: Confidential.

P 88–211

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Fiber-Reactive monoazo dyestuff.
Use/Production. (G) Fiber dye. Prod. range: Confidential.

P 88–212

Importer. Reichhold Chemicals Inc.
Chemical. (G) Polyurethane.
Use/Import. (G) General laminating adhesive. Import range: Confidential.

P 88–213

Importer. Confidential.
Chemical. (G) Amine terminated polyaromatic resin.
Use/Import. (G) Resin. Import range: Confidential.

P 88–214

Importer. Mitsubishi International Corporation.
Chemical. (G) Sucrose fatty acid esters; sucrose esters; sucrose esters of fatty acids.
Use/Import. (G) Emulsifier. Import range: Confidential.

P 88–215

Manufacturer. Uniroyal Chemical Co., Inc.
Chemical. (G) An isocyanate-terminated polyurethane prepolymer (polymer polyol terminated with 4,4-diphenylmethanediisocyanate (MDI)).
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–216

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (S) Bis(dimethylamino)thioxomethyl tetrasulfide.
Use/Import. (S) Additive for rubber compounds. Import range: 450–900 kg/yr.

P 88–217

Manufacturer. Amoco Corporation.
Chemical. (S) Tetrachloroethylene (solvent).
Use/Production. (G) Component in adhesive. Prod. range: Confidential.

P 88–218

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane containing hdyrogen groups.
Use/Import. (S) Silicone cross-linking agent. Import range: 800 kg/yr.

P 88–219

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (S) 1,3-Dimethyl-1,1,3,3-tetramethyldisiloxane; alcohol.
Use/Import. (S) Catalyst. Import range: 50 kg/yr.

P 88–220

Importer. Shin-Estu Silicone of America, Inc.
Chemical. (G) Siloxanes and silicones, alkyl methyl, dimethyl.
Use/Import. (S) Lubricant oil, base oil. Import range: 850 kg/yr.

P 88–221

Importer. Shi-Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane containing polyoxyalkylene and amine groups.
Use/Import. (S) Paint additive. Import range: 2,000 kg/yr.

P 88–222

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-substituted-indole.
Use/Import. (S) Textile colorant. Import range: Confidential.

P 88–223

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Polyalkylsiloxane.
Use/Import. (S) Base Oil. Release agent. Prod. range: 900 kg/yr.

P 88–224

Manufacturer. Alpha Resins Corporation.
Chemical. (G) Unsaturated polyester polymer.
Use/Production. (G) Resin system component. Prod. range: Confidential.

P 88–225

Importer. Rhone-Poulenc Inc.
Chemical. (G) Sodium phenylsulfonate.
Use/Import. (G) Dispersant, firing agent, tanning agent. Import range: Confidential.

P 88–226

Importer. Confidential.
Chemical. (G) Substituted-trisubstituted-indolium salt.
Use/Import. (S) Textile colorant. Import range: Confidential.

P 88–227

Importer. Confidential.
Chemical. (G) Polyester carbonate.
Use/Import. (S) Resin co-reactant. Import range: 91,000 kg/yr.

P 88–228

Manufacturer. Resinall Corp.
Chemical. (G) Hydrocarbon, steam-cracked aromatic C_5–C_{12} cycloalkadiene fractions polymer with heteromonocyclic-substituted alkylbenzene.
Use/Production. (S) Resin binder Prod. range: 3,000,000 kg/yr.

P 88–229

Manufacturer. Confidential.
Chemical. (G) Alkaline metal carboxylate.
Use/Production. (G) Oil additive. Prod. range: Confidential.

P 88–230

Manufacturer. Confidential.
Chemical. (G) Bis(aromatic anhydride).
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 4,020 mg/kg, species (rat).
Acute dermal toxicity: LD50 >10,000 mg/kg, species (rat).
Skin sensitization: positive.

P 88–231

Manufacturer. Milliken and Company.
Chemical. (G) Chromophore substituted polyoxyethylene.
Use/Production. (G) Colorant. Prod. range: Confidential.

P 88–232

Manufacturer. Polymer Industries Incorporated.

Chemical. (S) Adipic acid; terephthalic acid; 1,4-butanediol; neopentyl glycol; tetrabutyl titanate.
Use/Production. (S) Reactive polyol. Prod. range: 1,363,636 kg/yr.

P 88-233

Manufacturer. Polymer Industries Incorporated.
Chemical. (S) Adipic acid; polyethylene terephthalate; 1,4-butanediol; neopentyl glycol; tetrabutyl titanate.
Use/Production. (G) Reactive polyol. Prod. range: 1,363,636 kg/yr.

P 88-234

Manufacturer. Confidential.
Chemical. (G) Substituted polyethylene oxide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Eye irritation: slight, species (rabbit).
Skin irritation: negligible, species (rabbit).
Mutagenicity: negative.

P 88-235

Manufacturer. Arco Chemical Company.
Chemical. (G) Organic/inorganic copolymer.
Use/Production. (S) Absorbent fiber. Prod. range: Confidential.

P 88-236

Importer. DSM Resins U.S., Inc.
Chemical. (G) Dibasic acid/glycol ester.
Use/Import. (S) Roof coating. Import range: Confidential.

P 88-237

Importer. DSM Resins U.S., Inc.
Chemical. (G) Dibasic acid/glycol ester.
Use/Import. (S) Powder paint. Import range: Confidential.

P 88-238

Manufacturer. Confidential.
Chemical. (G) Modified polyether carbodiimide.
Use/Production. (G) Polymer cross-link agent. Prod. range: Confidential.

P 88-239

Manufacturer. Confidential.
Chemical. (S) Biphenol; a reaction product with formaldehyde.
Use/Production. (S) Binder resin. Prod. range: Confidential.

P 88-240

Manufacturer. Confidential.
Chemical. (G) Modified aromatic isocyanate prepolymer.
Use/Production. (G) Reactant. Prod. range: Confidential.

P 88-241

Manufacturer. E.I. du Pont de Nemours and Co. Inc.
Chemical. (G) Polyester-urethane silicone.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 88-242

Manufacturer. E.I. du Pont de Nemours and Co. Inc.
Chemical. (G) Lactone modified allylic polymer.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 88-243

Manufacturer. Hewlett-Packard.
Chemical. (G) paint jet magenta ink.
Use/Production. (S) Ink. Prod. range: Confidential.

P 88-244

Importer. Tosoh USA, Inc.
Chemical. (G) Acenaphthylene derivative.
Use/Import. (S) Flame-retardant. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 >5,000 mg/kg, species (rat).
Static acute toxicity: Time LC50 198 mg/L species (Carp).

P 88-245

Manufacturer. 3M.
Chemical. (G) Substituted phenol/formaldehyde resin.
Use/Production. (G) Surface treatment. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Eye irritation: Slight, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.
Skin sensitization: Negative, species (guinea pig).

P 88-246

Manufacturer. Confidential.
Chemical. (G) Isocyanate end-capped substituted polyethylene oxide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Eye irritation: Slight, species (rabbit).
Skin irritation: Moderate, species (rabbit).
Mutagenicity: Negative.

P 88-247

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted triazine formazine.
Use/Import. (G) Textile dye. Import range. Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat).
Static acute toxicity: Time LC50 96-hr >1,000 mg/L, species (Zebra fish).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.
Skin sensitization: Negative, species (guinea pig).

P 88-248

Manufacturer. E.I. Dupont deNemours and Co. Inc.
Chemical. (G) Styrene/acrylic anhydride copolymer.
Use/Production. (G) Highly dispersive. Prod. range: Confidential.

P 88-249

Importer. Quest International Fragrances USA, Inc.
Chemical. (G) Aliphatic oximes.
Use/Import. (G) Fragrance ingredient. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 526 mg/kg, species (rat).
Mutagenicity: Negative.
Skin sensitization: Negative, species (guinea pig).

P 88-250

Manufacturer. Confidential.
Chemical. (S) *p*-Menthadiene mixture plus camphene.
Use/Production. (S) Solvent. Prod. range: Confidential.

P 88-251

Importer. Goldschmidt Chemical Corporation.
Chemical. (S) Fumaric acid; sulfuric acid.
Use/Import. (S) Electrolytic Inking. Import range: 50,000 kg/yr.

P 88-252

Manufacturer. Confidential.
Chemical. (S) Maleic anhydride; alpha olefin C_{10} + greater; tertiary butyl peroxide; hydrogenated tallow amine.
Use/Production. (S) Wax inhibitor. Prod. range: 113,750 kg/yr.

P 88-253

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Siloxanes and silicones, alkyl halogenalkyl.
Use/Import. (G) Destructive use. Import range: 50,000 kg/yr.
Toxicity Data. Skin irritation: negligible, species (guinea pig).
Mutagenicity: Negative.

P 88–254

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) *N*-Butyldimethylchlorosilane.
Use/Production. (S) Coating. Prod. range: Confidential.

P 88–255

Manufacturer. Confidential.
Chemical. (G) Polymer of acrylic acid esters, a vinyl monomer, and a methacrylic acid ester.
Use/Production. (G) Construction adhesive. Prod. range: Confidential.

P 88–256

Manufacturer. Hexachimie S.A.
Chemical. (S) 2–Mercaptonicotine.
Use/Production. (G) Destructive use. Prod. range: 2000 kg/yr.

P 88–257

Manufacturer. Confidential.
Chemical. (G) Isocyanate reaction products with disubstituted benzene and alkylamines.
Use/Production. (G) Oil thickener. Prod. range: Confidential.

P 88–258

Importer. Alphagaz Specialty Gases Div.
Chemical. (S) Octahydrotrisilicon (trisilane).
Use/Import. (S) Feedstock. Import range: 1,000 kg/yr.

P 88–259

Manufacturer. 3M.
Chemical. (G) Acrylated polyurethane.
Use/Production. (G) Coating. Prod. range: Confidential.
Toxicity Data. Acute oral toxocity: LD50 >5,000 mg/kg, species (rat).
Eye Irritation: None, species (rabbit).
Skin Irritation: Negligible, species (rabbit).
Skin sensitization: Positive, species (guinea pig).

P 88–260

Manufacturer. Nuodex Inc.
Chemical. (G) Metal alkanoates.
Use/Production. (G) Coating additive. Prod. range: Confidential.

P 88–261

Manufacturer. Confidential.
Chemical. (S) *N,N*–Bis(2–hydroxyethyl)–*N*–benzylanilinium chloride.
Use/Production. (S) Corrosion inhibitor. Prod. range: 150,000 kg/yr.

P 88–262

Importer. Shin-Estu Silicones of America, Inc.
Chemical. (G) Hydrolysate of trimethoxylsilane.
Use/Import. (S) Coating. Import range: 10,000 kg/yr.

P 88–263

Importer. Confidential.
Chemical. (G) Organoalkoxysilane.
Use/Import. (S) Water repellant. Import range: 100,000 kg/yr.
Toxicity Data. Static acute toxicity: time LC50 48-hr >500 mg/L, species (killifish).

P 88–264

Manufacturer. Wilmington Chemical Corporation.
Chemical. (G) Aqueous aliphatic polyurethane.
Use/Production. (G) Coatings, open, nondispersive. Prod. range: Confidential.

P 88–265

Manufacturer. Confidential.
Chemical. (G) Modified aromatic isocyanate prepolymer.
Use/Production. (S) Reactant for polyurethane urea. Prod. range: Confidential.

P 88–266

Manufacturer. Macrochem Corporation.
Chemical. (G) Alkyl quarternary salt of an alkylaminoethyl methacrylate.
Use/Production. (S) Intermediate. Prod. range: 75,000 kg/yr.

P 88–267

Manufacturer. Confidential.
Chemical. (G) Modified polyhydroxyethylene alkyl ether adduct.
Use/Production. (G) Coating. Nondispersive use. Prod. range: Confidential.

P 88–268

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Printing ink vehicle. Prod. range: 8,840 kg/yr.

P 88–269

Manufacturer. Confidential.
Chemical. (G) Bodied vegetable oil.
Use/Production. (S) Vehicle for making printing inks. Prod. range: 80,000 kg/yr.

P 88–270

Manufacturer. Confidential.
Chemical. (G) Nitroaromatic thiazinoalkanoic acid derivative.
Use/Production. (G) Chemical intermediate. Prod. range: 30,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).
Skin Irritation: Slight, species (guinea pig).

P 88–271

Manufacturer. Confidential.
Chemical. (G) Cyclohexylamine substituted carboxylic acid.
Use/Production. (G) Site-limited raw material. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg, species (rat).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.

P 88–272

Manufacturer. Confidential.
Chemical. (S) Desmodur W; Duracarb 122; Dianol 33; 2–hydroxyethyl acrylate; Jeffamine D230.
Use/Production. (G) Radiation cure coating. Prod. range: 52,000 kg/yr.

P 88–273

Manufacturer. Mazer Chemicals, Inc.
Chemical. (G) Organic ester.
Use/Production. (G) Dispersant. Prod. range: Confidential.

P 88–274

Importer. Confidential
Chemical. (G) Polymeric ricinolic acid ester.
Use/Import. (S) Reactant. Import range: Confidential.

P 88–275

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (G) Modified guar.
Use/Production. (S) Dyestuff antimigrant. Prod. range: Confidential.

P 88–276

Manufacturer. Confidential.
Chemical. (G) Alcoholic polyimide.
Use/Production. (G) Coating, dispersive use. Prod. range: 40,000 kg/yr.

P 88–277

Importer. Confidential.
Chemical. (G) Reaction product of aluminum isopropoxide, ethyl acetoacetate and isobutyl alcohol.
Use/Import. (G) Reactive additive. Import range: Confidential.

P 88–278

Importer. Confidential.
Chemical. (G) Disubstituted carbopolycycle, 2-({8-[(4-chloro-6-{[-8-substituted-disubstituted-7-(1-substituted carbopolycycle-2-azocarbopolycycle)amino(1,3,5-triazin-2-yl)amino)alkyl)amino)-1,3,5,-triazin-2-yl)amino)-1-substituted-disubstituted carbopolycycle)azo)-, mixed salt.
Use/Import. (S) Dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat).

Skin Irritation: Negligible, species (rabbit).

P 88–277

Manufacturer. Confidential.
Chemical. (G) Modified polyester polymer.
Use/Production. (G) Automotive specialty chemical. Prod. range: 3,500 kg/yr.

P 88–280

Manufacturer. Resinall Corp.
Chemical. (G) Aromatic, acrylic ester polymers with monocarboxylic acids.
Use/Production. (S) Resin binder. Prod. range: 1,500,000 kg/yr.

P 88–281

Manufacturer. Confidential.
Chemical. (G) Vinyl modified acrylic polymer.
Use/Production. (G) Industrial coating. Prod. range: 16,000 kg/yr.

P 88–282

Manufacturer. Sjerex Chemical Company.
Chemical. (G) Fatty amine.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–283

Importer. Confidential.
Chemical. (S) Lithium montanate.
Use/Import. (S) Molded arting ingredient. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >7,000 mg/kg, species (rat.)
Acute dermal toxicity: LD50 8,000 mg/kg, species (rabbit).

P 88–284

Importer. Hoechst Celanese Corporation.
Chemical. (S) Lithium montanate.
Use/Import. (S) Transportation wax. Import range: 1,500 kg/yr.

P 88–285

Manufacturer. E.I. DuPont deNemours and Co., Inc.
Chemical. (G) Ammonium salt.
Use/Production. (G) Photographic film additive. Prod. range: Confidential.

P 88–286

Manufacturer. E.I. DuPont deNemours and Co., Inc.
Chemical. (G) Phenyl ammonium salt.
Use/Production. (F) Dye intermediate. Prod. range: Confidential.

P 88–287

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted toluidine.
Use/Production. (S) Chemical Intermediate. Prod. range: 14,520 kg/yr.

P 88–288

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted toluidine.
Use/Production. (S) Intermediate. Prod range: 9,020 kg/yr.

P 88–289

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted toluidine.
Use/Production. (S) Intermediate. Prod. range: 9,570 kg/yr.

P 88–290

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted toluidine.
Use/Production. (G) Intermediate. Prod. range: 5,500 kg/yr.

P 88–291

Importer. Confidential.
Chemical. (G) Unsaturated acidic polycarboxylic acid ester.
Use/Import. (G) Paint additive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 8.3 mg/kg, species (rat).
Eye irritation: Slight, species (rabbit).
Skin irritation: Negligible, species (rabbit).

P 88–292

Manufacturer. Stepan Company.
Chemical. (G) Polyether polyol.
Use/Production. (S) Production intermediate. Prod. range: Confidential.

P 88–293

Manufacturer. Stepan Company.
Chemical. (G) Polyether polyol.
Use/Production. (S) Production intermediate. Prod. range: Confidential.

P 88–294

Manufacturer. Confidential.
Chemical. (G) Acid modified styrenated acrylic polymer.
Use/Production. (G) Paint performance additive. Prod. range: 67,600 kg/yr.

P 88–295

Manufacturer. Confidential.
Chemical. (G) Water reducible copolymer alkyd.
Use/Production. (S) Enamel ingredient. Prod. range: Confidential.

P 88–296

Manufacturer. Amoco Corporation.
Chemical. (G) Aromatic amide-imide polymer.
Use/Production. (S) Molded arting ingredient. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>7,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 8,000 mg/kg, species (rabbit).

P 88–301

Importer. Confidential.
Chemical. (G) Modified phenolic resin.
Use/Import. (G) Resin. Import range: Confidential.

P 88–302

Manufacturer. Confidential.
Chemical. (G) Polycyclic Resin.
Use/Production. (G) Resin. Prod. range: Confidential.

P 88–303

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted cyanoanthraquinone dye.
Use/Import. (G) Dye. Import range: Confidential.

P 88–304

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic polymer.
Use/Production. (G) Coating. Prod. range: 11,500 kg/yr.

P 88–305

Manufacturer. Confidential.
Chemical. (G) Polysulfide acrylate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–306

Manufacturer. Stepan Company.
Chemical. (S) Dodecene sulfonic acid, sodium salts; hydroxydodecanesulfonic acid, sodium salts.
Use/Production. (S) Surfactant. Prod. range: Confidential.

P 88–307

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkylphenol, alkyl salt.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>2,000 mg/kg.
Skin irritation: Negligible, species (rabbit).

P 88–308

Manufacturer. Reichhold Chemicals Inc.
Chemical. (G) Polyterpene resin.
Use/Production. (S) Tackifier for adhesives. Prod. range: Confidential.

P 88–309

Manufacturer. Polymer Industries Incorporated.
Chemical. (S) Dibasic ester; polyethylene terephthalate; diethylene glycol; tetrabutyl titanate.
Use/Production. (S) Reactive polyol. Prod. range: 1,363,636.4 kg/yr.

P 88–310

Manufacturer. Confidential.
Chemical. (G) Polyurea; a polyisocyanate (aliphatic); and a polyamine (aliphatic) condensate.
Use/Production. (G) open, air dispersive. Prod. range; Confidential.

P 88–311

Manufacturer. Confidential.
Chemical. (G) Alkenyl alkoxy silane, olefin, olefin ester polymer.
Use/Production. (S) Cable insulation. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 3.56 mg/kg, species (rabbit).

P 88–312

Importer. Hoechst Celanese Corporation.
Chemical. (G) Saturated polyester resin.
Use/Import. (S) Resin for powder coatings. Import range: 270,000 kg/yr.

P 88–314

Importer. Hoechst Celanese Corporation.
Chemical. (G) Saturated polyester resin.
Use/Import. (S) Resin for powder coating. Import range: 70,000 kg/yr.

P 88–315

Manufacturer. Confidential.
Chemical. (G) Styrene-containing acrylic polymer.
Use/Production. (G) Dispersive coating. Prod. range: 500,000 kg/yr.

P 88–316

Importer. Confidential.
Chemical. (G) Substituted cyclohexylalkenone.
Use/Import. (G) Highly dispersive use. Import range: 500 kg/yr.

P 88–317

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Terpene-styrene resin.
Use/Production. (G) Ingredient. Prod. range: 500 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 > 2,000 mg/kg, species (rabbit). Mutagenicity: Negative.

P 88–318

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Terpene-styrene resin.
Use/Production. (S) Tackifier for adhesive. Prod. range: Confidential.

P 88–319

Importer. Confidential.
Chemical. (G) Propanenitrile, 3-alkyl-4-[[(substituted heteropolycycle)azo]phenyl]amino]-.
Use/Import. (S) Dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg, species (rat).
Skin irritation: Negligible, species (rabbit).

P 88–320

Importer. Confidential.
Chemical. (G) Propanenitrile, 3-alkyl-4-[[(substituted heteropolycycle)azo]phenyl]amino]-.
Use/Import. (S) Dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg, species (rat).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).

P 88–321

Manufacturer. Confidential.
Chemical. (G) Polyphenol.
Use/Production. (G) Developer resin. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg, species (rat).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.
Skin sensitization: Negative, species (guinea pig).

P 88–322

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Substituted azotriazinenaphthalenedisulfonic acid.
Use/Production. (G) Textile dye. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg, species (rat).
Acute dermal toxicity: LD50 > 2,000 mg/kg, species (rabbit).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.
Skin sensitization: Negative, species (guinea pig).

P 88–323

Manufacturer. Confidential.
Chemical. (G) Reaction product of ammonium salt with cyanoguanidine aliphatic aldehydes.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–324

Manufacturer. Confidential.
Chemical. (G) Arylarylsulfonate, metal salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–325

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–326

Importer. Nobel Chemicals Inc.
Chemical. (S) 2,3,4-Trichloro-1,5-dinitrobenzene.
Use/Import. Confidential. Import range: Confidential.

P 88–327

Manufacturer. Colgate-Palmolive Company.
Chemical. (S) Amines. bis(hydrogenated tallow alkyl)methyl-, citrates.
Use/Production. (G) Laundry powder additive. Prod. range: Confidential.

P 88–328

Manufacturer. Baker Performance Chemicals Incorporated.
Chemical. (G) Thiocarbamate sodium salt.
Use/Production. (S) Water clarifier. Prod. range: Confidential.

P 88–329

Manufacturer. Confidential.
Chemical. (G) Polyester-urethane resin.
Use/Production. (G) *Coating for metal surfaces. Prod. range: Confidential.*

P 88–330

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (G) Oligomeric aminoalkylsiloxane.
Use/Production. (G) Adhesive promoter. Prod. range: Confidential.

P 88–331

Manufacturer. Neville Chemical Company.
Chemical. (G) Carboxylic acid modified hydrocarbon resin.
Use/Production. (S) Ink flushing resin. Prod. range: Confidential.

P 88–333

Importer. Quest International Fragrances USA, Inc.
Chemical. (G) Anthranilic acid methyl ester, *N*-heteropolycyclic alkenyl substituted.
Use/Import. (G) Fragrance ingredient. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 4,434 mg/kg, species (rat).
Eye irritation: None, species (rabbit).
Skin irritation: Negligible, species (rabbit).
Mutagenicity: Negative.
Skin sensitization: Negative, species (guinea pig).

P 88–334

Importer. Degussa Corporation.
Chemical. (G) 1,2-Epoxyhexane.
Use/Import. (G) Organic intermediate. Import range: 40,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 3,364 mg/kg, species (rat).
Skin irritation: Moderate, species (rabbit).

P 88–335

Importer. Degussa Corporation.
Chemical. (S) 1,2-Epoxyhexane.
Use/Import. (S) Intermediate. Import range: 40,000 kg/yr.

P 88–336

Manufacturer E.I. du Pont de Nemours and Co., Inc.
Chemical. (G) Zeromethine merocyanine dye.
Use/Production. (G) Dye intermediate. Prod. range: Confidential.

P 88–337

Manufacturer. E.I. du Pont de Nemours and Co., Inc.
Chemical. (G) Disubstituted cyclopentanone.
Use/Production. (G) Photosensitive film additive. Prod. range: Confidential.

P 88–338

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Tall oil fatty alkyd resin.
Use/Production. (G) Industrial coating vehicle. Prod. range: Confidential.

P 88–339

Manufacturer. Neville Chemical Company.
Chemical. (G) Acid-modified and electrified petroleum resin.
Use/Production. (G) Pigment dispersing resin. Prod. range: Confidential.

P 88–340

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate.
Use/Production. (G) Coating. Prod. range: 140,000 kg/yr.

P 88–341

Manufacturer. Biddle Sawyer Corporation
Chemical. (G) Copolymer.
Use/Production. (G) In-can stabilizer for UV-Systems. Prod. range: Confidential.

P 88–342

Manufacturer. Confidential.
Chemical. (G) Polyurea. A polyisocyanate (aliphatic) and a polyamine (aliphatic) condensate.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–343

Manufacturer. PPG Industries, Inc.
Chemical. (G) Silylated polystyrene sulfonate.
Use/Production. (G) Coating. Prod. range: 40 kg/yr.

P 88–344

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Terpene-styrene resin.
Use/Production. (G) Tackifier for adhesives. Prod. range: Confidential.

P 88–345

Manufacturer. Olin Corporation.
Chemical. (S) 2-Propenoic acid, polymer with 1,3-diisocyanatomethylbenzene, methyloxirane, and oxirane.
Use/Production. (G) Polymer precursor. Prod. range: Confidential.

P 88–346

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalenesulfonic acid.
Use/Production. (G) Dye. Prod. range: 33,300 kg/yr.

P 88–347

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted azonaphthalenesulfonic acid.
Use/Production. (G) Fiber-reactive dye. Prod. range: 29,500 kg/yr.

P 88–348

Manufacturer. Finetex, Inc.
Chemical. (G) *N*-(3-(Alkoxy)propyl)-*N*,-*N*-dialkoxy-*N*-alkyl quaternary ammonium alkylsulfate.
Use/Production. (G) Anti-static agent. Prod. range: 40,000 kg/yr.

P 88–349

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Dianilinobenzoquinone derivative.
Use/Production. (G) Dyestuff intermediate. Prod. range: 41,400 kg/yr.

P 88–350

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Fiber-reactive monoazo dyestuff.
Use/Production. (G) Fiber-reactive dye. Prod. range: 49,200 kg/yr.

P 88–351

Manufacturer. Confidential.
Chemical. (G) Amide-Imide.
Use/Production. (G) Coating. Prod. range: Confidential.

P 88–352

Manufacturer. Confidential.
Chemical. (G) Methacryl phosphate.
Use/Production. (G) Adhesive additive. Prod. range: Confidential.

P 88–353

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted azonapthalenesulfonic acid.
Use/Production. (G) Fiber-reactive dye. Prod. range: 27,000 kg/yr.

P 88–354

Manufacturer. Confidential.
Chemical. (G) Oleoresin.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

P 88–355

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester.
Use/Production. (G) Coatings. Prod. range: 46,000 kg/yr.

P 88–356

Importer. Confidential.
Chemical. (G) Diazoquinone modified novolac.
Use/Production. (G) Confidential. Import range: Confidential.

P 88–357

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted dioxazine.
Use/Production. (G) Dyestuff intermediate. Prod. range: Confidential.

P 88–358

Manufacturer. PPG Industries Inc.
Chemical. (G) Silylated cationic acrylate polymer.
Use/Production. (S) Coatings. Prod. range: 40 kg/yr.

P 88–363

Importer. Confidential.
Chemical. (G) Alkyd resin.
Use/Importer. (G) Resin. Import range: Confidential.

P 88–364

Manufacturer. Confidential.
Chemical. (G) Alkylammonium chloride.
Use/Production. Confidential. Prod. range: Confidential.

P 88–366

Manufacturer. Dow Chemical Company.
Chemical. (G) Oximosilane.
Use/Production. (G) Cross-linkers. Prod. range: Confidential.

P 88–367

Importer. Mitsubishi Chemical Industries America.
Chemical. (G) Substituted cross-linked copolymer of alkyl methacrylate.
Use/Production. (G) Anion exchanger. Import range: Confidential.

P 88–368

Manufacturer. Uniroyal Chemical Co. Inc.
Chemical. (G) Blocked polyester prepolymer.
Use/Production. (S) Binders. Prod. range: Confidential.

P 88–373

Manufacturer. Confidential.
Chemical. (G) Lithium alkyl.
Use/Production. (G) Additive for gas treatment. Prod. range: Confidential.

P 88–374

Manufacturer. Confidential.
Chemical. (G) Metal resinate.
Use/Production. (S) Resin for gravure inks. Prod. range: Confidential.

Date: February 16, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–4033 Filed 2–24–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 18, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Comunications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

Please note: FCC has requested expedited review of this item by March 15, 1988. Therefore, comments sent to OMB should arrive prior to that date.

OMB Number: 3060–0046.
Title: Application for New or Modified Common Carrier Radio Station Authorization Under Part 22.
Action: Revision (Third Notice of Proposed Rulemaking—CC Docket Number 85–388).
Respondents: Businesses (including small businesses).
Frequency of Response: On occasion.
Estimated Annual Burden: 100,000 Responses; 800,000 Hours.
Needs and Uses: The Third Notice of Proposed Rulemaking (NPRM) pursuant to section 3504(h) of the Paperwork Reduction Act requests public comment on the Commission's proposal to require respondents filing applications to provide cellular radio service to Rural Service Areas (RSAs) to demonstrate, at the time of filing, that they have a firm financial commitment to construct and operate the proposed stations. Please note that OMB review is being sought only for the proposals contained in the NPRM. The FCC 401 which is associated with this NPRM is not being revised.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–3969 Filed 2–24–88; 8:45 am]

BILLING CODE 6712–01–M

Steering Committee to the FCC Advisory Committee on Advanced Television Service; Meeting

1. A meeting of the Steering Committee to the FCC Advisory Committee on advanced Television Service will be held on: March 10, 1988, 9:30 a.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC 20554.
2. The agenda for the meeting will consist of:
a. Approval of minutes of first meeting.
b. Progress reports by Subcommittee chairmen.
c. Working party organization and personnel matters.
d. Special Reports.
—Funding proposal/guidelines.
—Document numbering.
e. Report on anticipated work of ATSC and the Broadcast Technology Center.
f. Other business.
g. Date and location of next full Advisory Committee meeting.
h. Date and location of next Steering Committee meeting.
i. Adjournment.
3. All interested persons are invited to attend.
4. Those interested may also submit written statements at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Steering Committee Chairman.
5. Any questions regarding this meeting should be directed to William Hassinger at (202) 632–6460, or Steve Bailey at (202) 632–5414.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–3970 Filed 2–24–88; 8:45 am]

BILLING CODE 6712–01–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 communicting with the Commission regarding a pending agreement.

Agreement No.: 204–010064–014.
Title: U.S. Gulf/Colombia Equal Access Agreement.
Parties:
Lykes Bros. Steamship Co., Inc.
Flota Mercante Grancolombiana, S.A.
Crowley Caribbean Transport
CTMT, Inc.
New York Navigation Company, Inc.
Dock Express Contractors, Inc.
O S & L of Louisiana, Inc.
Synopsis: The proposed amendment would extend the term of the agreement indefinitely. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: February 22, 1988.

[FR Doc. 88–4038 Filed 2–24–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 15–16, 1987, and January 5, 1988

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meetings held on December 15–16, 1987, and January 5, 1988.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The economic information reviewed at this meeting largely reflected the influence of developments that were under way before the financial disturbances of mid-October. The extent to which those disturbances would affect the economy remained uncertain. Information available for the current quarter suggested that the expansion in economic activity was moderating from a brisk pace in the third quarter. Total nonfarm payroll employment rose strongly further over October and November, with the manufacturing sector recording relatively large gains. The civilian unemployment rate, at 5.9 percent in November, remained close to its level since mid-year. Industrial production also increased considerably further over October and November, following sizable advances since late spring. Retail sales edged up in November after two months of substantial declines. Recent indicators of business capital spending suggested modest further growth after a surge in the third quarter. Housing starts rose somewhat in November, after slowing in October, but were little changed from the average pace in the second and third quarters. The nominal U.S. merchandise trade deficit in October appeared to have deteriorated substantially from the average rate in the third quarter. The rise in broad measures of prices and wages in recent months generally has been close to that experienced earlier in the year.

Financial markets remained somewhat unsettled. Stock and bond prices continued to fluctuate over a relatively wide range during the period since the previous Committee meeting on November 3. On balance, share prices fell somewhat further in this period. Changes in long-term yields were mixed while short-term interest rates rose, especially on short-maturity private market instruments. The trade-weighted foreign exchange value of the dollar in terms of the other G-10 currencies declined considerably further.

The monetary aggregates weakened in November after strengthening in October in conjunction with a temporary surge in demands for transaction balances and other liquid assets in the latter part of that month. For 1987 through November, expansion of M2 fell somewhat further below the lower end of the range established by the Committee for the year, while growth of M3 remained around the lower end of its range. Growth of M1 was close to that of nominal GNP for the year to date and expansion in total domestic nonfinancial debt remained well within the Committee's monitoring range for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee agreed at its meeting in July to reaffirm the ranges established in February for growth of 5½ to 8½ percent for both M2 and M3 measured from the fourth quarter of 1986 to the fourth quarter of 1987. The Committee agreed that growth in these aggregates around the lower ends of their ranges might be appropriate in light of developments with respect to velocity and signs of the potential for some strengthening in underlying inflationary pressures, provided that economic activity was expanding at an acceptable pace. The monitoring range for growth in total domestic nonfinancial debt set in February for the year was left unchanged at 8 to 11 percent.

For 1988, the Committee agreed in July on tentative ranges of monetary growth, measured from the fourth quarter of 1987 to the fourth quarter of 1988, of 5 to 8 percent for both M2 and M3. The Committee provisionally set the associated range for growth in total domestic nonfinancial debt at 7½ to 10½ percent.

With respect to M1, the Committee recognized that, based on experience, the behavior of that aggregate must be judged in the light of other evidence relating to economic activity and prices; fluctuations in M1 have become much more sensitive in recent years to changes in interest rates, among other factors. Because of this sensitivity, which had been reflected in a sharp slowing of the decline in M1 velocity over the first half of the year, the Committee again decided at the July meeting not to establish a specific target for growth in M1 over the remainder of 1987 and no tentative range was set for 1988. The appropriations of changes in M1 this year would continue to be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressures. The Committee welcomed substantially slower growth of M1 in 1987 than in 1986 in the context of continuing economic expansion and some evidence of greater inflationary pressures. The Committee indicated in July that in reaching operational decisions over the balance of the year it would take account of growth in M1 in the light of circumstances then prevailing. The issues involved with establishing a target for M1 will be carefully reappraised at the beginning of 1988.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. The Committee agrees that the passing of time and the year-end should permit further progress toward restoring a normal approach to open market operations, although still sensitive conditions in financial markets and uncertainties in the economic outlook may continue to call for some flexibility in operations. Taking account of conditions in financial markets, somewhat lesser reserve restraint or somewhat greater reserve restraint would be acceptable depending on the strength of the business expansion, indications of inflationary pressures, developments in foreign exchange markets, as well as the behavior of the monetary aggregates. The contemplated reserve conditions are expected to be consistent with growth in M2 and M3 over the period from November through March at annual rates of about 5 percent and 6 percent, respectively. Over the same period, growth in M1 is expected to remain relatively limited. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, February 19, 1988.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 88–3959 Filed 2–24–88; 8:45 am]

BILLING CODE 6210–01–M

[1] Copies of the Record of policy actions of the Committee for the meetings of December 15–16, 1987, and January 5, 1988, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 11, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *R. Wayne Lowe,* Warner Robins, Georgia; to acquire an additional 22.6 percent of the voting shares of International City Bank Corp., Inc., Warner Robins, Georgia, and thereby indirectly acquire International City Bank, Warner Robins, Georgia.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Glen B. Clark, Jr.*, Evergreen, Colorado; to acquire 20 percent; and Gary D. Whitlock, Colorado Springs, Colorado, to acquire 20 percent of the voting shares of The Citadel Bankcorporation, Colorado, Springs, Colorado, and thereby indirectly acquire The Citadel Bank, Colorado Springs, Colorado.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Robert L. Swanson* and Dewey F. Bargiacchi; to acquire an additional 11.9 percent of the voting shares of Bay Commercial Services, San Leandro, California, and thereby indirectly acquired Bay Bank of Commerce, San Leandro, California.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3962 Filed 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to aquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 14, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Carl R. Renfro*, Ponca City, Oklahoma; to acquire an additional 44.81 percent of the voting shares of Pioneer Bancshares, Inc., Ponca City, Oklahoma, and thereby indirectly acquire Pioneer Bank and Trust, Ponca City, Oklahoma.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *James R. Fraser*, Sandy, Utah; to acquire an additional 0.97 percent of the voting shares of Brighton Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Brighton Bank, Salt Lake City, Utah.

2. *David E. Worthen*, Bountiful, Utah; to acquire an additional. 0.97 percent of the voting shares of Brighton Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Brighton Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3965 Filed 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

Eastcorp, 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 presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 16, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Eastcorp, Inc.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Eastbank National Association, New York, New York.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Governors Bank Corporation*, West Palm Beach, Florida; to become bank holding company by acquiring 90 percent of the voting shares of Governors Bank West Palm Beach, Florida.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Park Ridge Bancshares, Inc.*, Stevens Point, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Park Ridge, Park Ridge, Wisconsin. Comments on this application must be received by March 10, 1988.

2. *W B Bancorp, Inc.*, New Berlin, Illinois; to acquire 98.64 percent of the voting shares of First State Bank, New Berlin, Illinois. Comments on this application must be received by March 10, 1988.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Granby Bancshares, Inc.*, Neosho, Missouri; to acquire 100 percent of the voting shares of Fairland Holding Company, Inc., Neosho, Missouri, and thereby indirectly acquire The First National Bank of Fairland, Fairland, Oklahoma.

2. *Northern Missouri Banchares, Inc.*, Unionville, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of The Farmers Bank of Unionville, Unionville, Missouri.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3960 Field 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

Excel 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 presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 16, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Excel Bancorp, Inc.*, Quincy, Massachusetts; to acquire 100 percent of the voting shares of Lincoln Trust Company, Hingham, Massachusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community Financial Corporation*, Mableton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank & Trust Company, Mableton, Georgia.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3961 Filed 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

Montana Bancsystem, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 16, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Montana Bancsystem, Inc.*, Billings, Montana; to engage *de novo* in making and servicing loans, on a limited basis, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the states of Montana, Colorado, and Texas.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3963 Filed 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

Olmstead Bancorporation, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) of the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 16, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Olmstead Bancorporation, Inc.*, Byron, Minnesota; to engage *de novo* in acting as investment or financial advisor to the extent of providing portfolio investment advice to any other person pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3964 Filed 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a

company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 16, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to acquire Commerce Union Financial Markets, Inc., Nashville, Tennessee, and thereby engage in providing discount securities brokerage services and the purchase and sale of gold and silver bullion and gold coins solely for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y and Board Order.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Sheboygan, Wisconsin; to acquire First Interstate Commercial Corporation of Wisconsin, Sheboygan, Wisconsin, and thereby engage in making and servicing commercial finance loans pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3966 Filed 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

Stuart Family Partnership; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reverse Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 16, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Stuart Family Partnership*, Lincoln, Nebraska; to become a bank holding company by acquiring 53.4 percent of the voting shares of First Commerce Bancshares, Inc., Lincoln, Nebraska, and thereby indirectly acquire Commerce Savings Columbus, Inc., Columbus, Nebraska; Overland National Bank of Grand Island, Grand Island, Nebraska; City National Bank of Hastings, Hastings, Nebraska; First National Bank of Kearney, Kearney, Nebraska; Commerce Savings Lincoln, Inc., Lincoln, Nebraska; National Bank of Commerce, Lincoln, Nebraska; North Platte National Bank, North Platte, Nebraska; Commerce Savings Scottsbluff, Inc., Scottsbluff, Nebraska; and First National Bank of West Point, West Point, Nebraska.

In connection with this application, Applicant also proposes to acquire Commerce Affiliated Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsuring credit life, accident and health insurance sold in connection with credit extension by lending subsidiaries under § 225.25(b)(8)(i); and First Commerce Investors, Inc., Lincoln, Nebraska, and thereby engage in providing investment advisory services under §§225.25(b)(4)(iii) & (iv) of the Board's Regulation Y.

Also, The Catherine Stuart Schmoker Family Partnership, The James Stuart, Jr. Family Partnership, and The Scott Stuart Family Partnership, all of Lincoln, Nebraska; propose to become a bank holding company by acquiring 33 percent of the voting shares of Stuart Family Partnership, Lincoln, Nebraska, and thereby indirectly acquire the banking and nonbanking activities of First Commerce Bancshares, Inc., Lincoln, Nebraska.

Board of Governors of the Federal Reserve System, February 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3967 Filed 2-24-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Advisory Committee on the FTS 2000 Procurement; Establishment

Establishment of Advisory Committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92–463) and advises of the establishment of the General Services Administration (GSA) Advisory Committee on the FTS 2000 Procurement. The Administrator of General Services has determined that establishment of this committee is in the public interest.

Designation. General Services Administration Advisory Committee on the FTS 2000 Procurement.

Purpose. The purpose of the committee will be to advise the Administrator of General Services on key issues relating to GSA's FTS 2000 procurement including, but not limited to: (1) The review of offers received, as necessary; (2) the provision of the committee's views regarding specific offers received, including the basis for those views; (3) the provision of the committee's views of the evaluation process utilized for the procurement; and, (4) making recommendations to the Administrator relative to contract awards under the procurement.

Contact for Information. For additional information, contact James L. Dean, Director, Committee Management Secretariat, Office of Administration, GSA, Washington, DC 20405, telephone (202) 523–4884.

Dated: February 10, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–3996 Filed 2–24–88; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: Minneapolis District Office, chaired by James L. Roberts, District Director. The topic to be discussed is the safe use of medications: over-the-counter, prescription, and generic.

DATE: Thursday, March 17, 1988, 1 p.m. to 3 p.m.

ADDRESS: Whitney Senior Center, 1125 Northway Dr., St. Cloud, MN 56301.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–3958 Filed 2–24–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Immunology Devices Panel

Date, time, and place. March 21 and 22, 1988, 9 a.m., Hubert H. Humphrey Bldg., Rm. 503A–529A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, March 21, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; March 22, 1988, 9 a.m. to 10 a.m., open committee discussion; closed presentation of data, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, Md 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open Public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before March 7, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a tumor marker test kit to be used in the monitoring of cancer patients, and PMA supplement for a test kit for alpha-fetoprotein used as an aid in detection of neural tube defects.

Closed presentation of data. Trade secret and/or confidential commerical or financial information will be presented to the committee regarding the premarket approval applications above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding the PMA's above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. March 11, 1988, 8:30 a.m., Rm. 703A–727A, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m., to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before February 26, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket

approval applications (PMA's) for a contact laser system for peripheral vascular use, a pulse generator system, and possibly one for a prosthetic heart valve.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commerical or financial information regarding the PMA's above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–4101 Filed 2–23–88; 12:12 pm]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Designation of Medically Underserved Populations

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Under section 330 of the Public Health Service (PHS) Act the Secretary may award grants to public and non-profit private entities for planning, developing and operating community health centers and projects which serve medically underserved populations as designated by the Secretary. Section 330 of the PHS Act defines medically underserved populations (MUPs) and specifies

certain procedures for the Secretary in designating and dedesignating MUPs. Through this notice, and in accord with the provisions of section 330 of the PHS Act, the Secretary proposes to designate certain populations as MUPs.

DATE: Comments should be in writing and should be postmarked by March 28, 1988. If no objections are received within this period, the population(s) specified in this notice will be designated as MUPs by the Secretary. If valid objections are received, the Secretary will publish responses to them within 75 days from the date of publication of the notice and will grant, modify, or deny designation of the population(s) as MUPs, as appropriate.

ADDRESS: Mail comments to Mr. James Purvis, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7–15, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bohrer, Director, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A–55, Rockville, Maryland, 20857, (301) 443–2260.

SUPPLEMENTARY INFORMATION: Section 330(b)(3) of the Public Health Service (PHS) Act (42 U.S.C. 254c(b)(3)) defines a medically underserved population (MUP) as a population of an urban or rural area designated by the Secretary as an area with a shortage of personnel health services or a population group designated by the Secretary as having a shortage of such services. On September 2, 1975, and October 15, 1976, the Secretary published criteria in the **Federal Register** for use in designating and prioritizing MUPs, and as appropriate, the Secretary has published subsequent designations and dedesignations of MUPs. According to **Federal Register** criteria, a population must have a weighted value score of 62 or less to be recommended for addition to the MUP list.

Section 330(b)(5), as amended by Pub. L. 99–280, requires the Secretary, in designating and dedesignating MUPs in a State, to provide notice and opportunity to comment and to consult with: (1) The chief executive officer of the State, (2) local officals of the State, and (3) the State organization, if any, representing a majority of community health centers in the State.

HHS is currently developing regulations to specify procedures for providing such notice and opportunity for comment. Until these regulations are published, this notice provides an opportunity for chief executive officers and appropriate community health center organizations of the States in which the Secretary is proposing to designate MUPs to comment on the Secretary's proposals to designate as MUPs the areas described in this notice. Also, until regulations are published to define "local officials," this notice provides the vehicle for "local officials" to comment on the proposed MUP designation as provided in section 330(b)(5).

The Secretary has determined that it would be inappropriate to delay acting on these designations until the regulations are published.

Therefore, the Secretary is seeking comments and recommendations on these proposed designations from chief executive officers of States, local officials of States and of the particular populations involved in the proposed designations, and from the organization which represents a majority of the community health centers in each affected State.

The populations which have been recommended for designation are:

(1) New York

NY-Penn Health Systems Agency is requesting that a population the City of Binghamton in the State of New York be designated as a Medically Underserved Population (MUP). Specifically, this area includes the contiguous City Census Tracts 2–8 and 10–13. This area represents NY-Penn's Primary Care Analysis Areas (PCAAs) 15 and 16 and is one rational service care.

The service are scores 49.0 on the Index of Medical Underservice (IMU), substantially lower than the requirement of 62.0.

Factor	Percent/ ratio	Weight
Infant mortality rate [1]	14.0	21.5
Population 65+	20.3	9.8
Population below poverty	19.6	14.9
Physician-to-population ratio	.2/1,000	2.8
Total		49.0

[1] Based on city of Binghamton figures.

This data has been reviewed by the Division of Primary Care Services and found to be accurate.

(2) New Mexico

The New Mexico Department of Health and Environment is requesting that a section of Santa Fe County in New Mexico be designated as a Medically Underserved Population (MUP). Specifically this area includes the contiguous census tracts 3, 4, 7–9, 10.02 and 12 and is a rational service area.

This area scores 55.3 on the Index of Medical Underservice (IMU) which is lower than the requirement of 62.0.

Factor	Percent/ ratio	Weight
Infant mortality rate	11.3	23.2
Population 65+	8.8	19.9
Population below poverty	22.3	12.2
Physician to population ratio	0	0
		55.3

This data has been reviewed by the Division of Primary Care Services and found to be accurate.

(3) California

The Porterville Family Health Center, Inc., and the Central California Health Systems Agency are requesting that census tracts 27, 33–42 and 45 of Tulare County, California, be designated as a Medically Underserved Population (MUP). This area represents the service area of the Porterville Family Health Center and is one rational service area.

This area scores 56.2 on the Index of Medical Underservice (IMU), which is lower than the requirement of 62.0.

Factor	Percent/ ratio	Weight
Infant mortality rate	14.44	20.5
Population 65+	12.87	19.1
Population below poverty	25	10.9
Physician to population ratio	.28/1,000	5.7
		56.2

This data has been reviewed by the Division of Primary Care Services and found to be accurate.

(4) Virginia

The Virginia Department of Health is requesting that Dinwiddie County, Virginia, be designated as a Medically Underserved Population (MUP). The county scores 60.3 on the Index of Medical Underservice (IMU) which is lower than the requirement of 62.0

Factor	Percent/ ratio	Weight
Infant mortality rate	14.2	20.5
Population 65+	10.9	19.6
Population below poverty	13.4	18.7
Physician to population ratio	.146/1,000	1.5
		60.3

(5) Kansas

The Health Systems Agency of Northeast Kansas is requesting that a group of 12 townships located in the northeast section of Pottawatomie County, Kansas, be designated as a Medically Underserved Population (MUP). These townships are Center, Clear Creek, Emmett, Grant, Lincoln, Lone Tree, Mill Creek, Rock Creek, St. Clere, Sherman, Union and Vienna, which represented a rational service area.

The service area scores 50.9 on the Index of Medical Underservice (IMU) which is substantially lower than the requirement of 62.0.

Factor	Percent/ ratio	Weight
Infant mortality rate	12.4	22.4
Population 65+	21.0	9.8
Population below poverty	13.8	18.7
Physician to population ratio	.41/1,000	10.7
		61.6

This data has been reviewed by the Division of Primary Care Services and found to be accurate.

(6) Maine

The State of Maine Department of Human Services is requesting that the Kingfield Primary Care Analysis Area (PCAA) in Franklin County, Maine, be designated as a Medically Underserved Population (MUP). Specifically this area includes the contiguous towns of Carrabassett Valley, Kingfield, Phillips and Wyman and three unorganized areas. The Kingfield PCAA is one of 62 PCAAs that cover all areas of the State and is a rational service area.

This area scores 59.5 on the Index of Medical Underservice (IMU) which is lower than the requirement of 62.0.

Factor	Percent/ ratio	Weight
Infant mortality rate	23.6	10.8
Population 65+	14.7	18.7
Population below poverty	16.0	17.4
Physician to population ratio	.46/1,000	12.6
		59.5

This data has been reviewed by the Division of Primary Care Services and found to be accurate.

Dated: February 19, 1988.

David N. Sundwall,

Administrator.

[FR Doc. 88-4035 Filed 2-24-88; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

[Program Announcement No. 13631-88-2]

Developmental Disabilities; Availability of Grants To Determine the Feasibility and Desirability of Developing a Nationwide Information and Referral System for Persons With Developmental Disabilities

AGENCY: Administration on Developmental Disabilities (ADD), Office of Human Development Services (OHDS).

ACTION: Announcement of the availability of funds and request for applications for projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities.

SUMMARY: The Office of Human Development Services announces that applications are being accepted and grants will be awarded for not more than three projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. These funds will be awarded through a national competition to applicants who indicate they have the capability to adequately complete the necessary research.

Section 163 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended October 29, 1987, requires the Secretary to award grants for such projects within 6 months after the date of enactment (by April 29, 1988).

DATE: The closing date for receipt of applications is April 11, 1988.

ADDRESSES: Applications should be sent to: the Office of Human Development Services, Acquisition and Assistance Management Branch, Attention: Ms. Margaret A. Tolson, Grants Officer, 200 Independence Avenue SW., HHH Building, Room 349F, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Judy Moore, PNS Coordinator (202) 245-1961.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

The Developmental Disabilities and Bill of Rights Act (the Act), 42 U.S.C. 6000, has traditionally served a target population who, by virtue of their severe handicapping conditions, have been underserved or inappropriately served through existing programs. This Act makes funds available to States to assure that persons with developmental disabilities receive appropriate care, treatment, habilitation and support services.

The major programs under the Act are:

- Basic State formula grants.
- Grants to States to establish systems for the protection and advocacy of individual rights.
- Grants to University Affiliated programs.
- Grants for projects of national significance.

Under Part E, Projects of National Significance, specifically sections 162(a) and 163 of the Act, the Secretary is authorized to make grants for no more than three projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. This announcement solicits applications for such projects.

B. Other Efforts to Establish a National Information and Referral System

1. Based on a requirement in Pub. L. 98-457, the Child Abuse Amendments of 1984, OHDS published an announcement in the **Federal Register** (51 FR 24620-24624, July 7, 1986) soliciting applications to establish and operate a national information and resource clearinghouse to provide information on community, regional and national resources for the provision of services and treatment for disabled infants with life-threatening conditions. This national clearing house was expected to provide at a minimum, the most current and complete information on:

a. Medical treatment procedures and resources for disabled infants including

the names, addresses, contact persons, and telephone numbers of all community, regional and national resources, e.g.:

- All University Affiliated Facilities for the Developmentally Disabled;
- All accredited tertiary care facilities with neonatal intensive care units and those units with infant care review committees;
- The accredited tertiary care facilities with comprehensive surgery capability, i.e., all eight divisions of pediatric surgery; and
- Other information resources such as the Medical Information Network (MINET) and the National Library of Medicine/Medical Reference Library.

b. Community services and resources for legal, social services, financial, educational, adoption, advocacy, and parent support services for disabled infants including appropriate names, addresses, contact persons, and telephone numbers.

c. Existing directories of community services and resources for disabled infants and how these directories may be obtained, including the names, addresses, contact persons, and telephone numbers of the distributors, and the fees that may be charged.

d. Regional directories of community services and resources, including State and local medical organizations, compiled and updated by the grantee as needed for areas where no regional directory exists. The grantee was not required to duplicate existing directories.

e. All appropriate regional education and training resources for health-care personnel, including appropriate names, addresses, contact persons, and telephone numbers.

The grantee was also expected to establish collaborative or networking arrangements with other agencies and organizations (national, regional, community) for the purpose of sharing information and assuring that efforts to provide information on services and treatment for disabled infants with life-threatening conditions were not duplicated.

2. Based on section 502 of Title V of the Social Security Act, the Office of Maternal and Child Health, Health Resources and Services Administration, Public Health Service, funded a computerized National Information and Referral System (INFORMS) for developmentally disabled and chronically ill children. This system was operational beginning in December 1986.

3. The National Parent CHAIN (Coalitions for Handicapped Americans Information Network) is a coalition of parent, disabled consumer, and professional organizations with affiliates in all 50 States and the territories. It is a grassroots national organization linking parents, consumers, professionals and volunteers throughout the United States. It provides:

- Information about services in geographic areas.
- Direct links with organizations and other States.
- A national network of individuals who can provide personal support.
- A national electronic communications system and information-sharing network.
- Periodic mailings and publications on items of interest to parents, consumers and other interested citizens.

CHAIN also provides information-sharing and networking services on:

(a) Parent training programs and practices;

(b) Local parent and family support services; and

(c) Assistance for parents of newly diagnosed disabled infants and children.

C. Eligible Applicants

Any public or private non-profit agency or organization capable of conducting a study that will clearly determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities is eligible to apply.

D. Available Funds

The Administration on Developmental Disabilities expects to award approximately $600,000 in FY 1988 for no more than three grants. Project period is expected to be 18 months.

Part II. Specific Responsibilities of the Grantee

A. Grantee Responsibilities

Projects funded under this solicitation are intended to determine the feasibility and desirability of developing a nationwide information and referral system for people with developmental disabilities. By a nationwide information and referral system we mean a system accessible from any place in the nation, capable of providing information to professionals, persons with developmental disabilities, parents of persons with developmental disabilities, and others concerning resources for the treatment and provision of services to persons with developmental disabilities. This nationwide system may be one system managed by one grantee from one operational base, or it may be several coordinated regional information and referral systems covering the nation.

Grantees will be required to describe various designs or models for establishing such a nationwide information and referral system and discuss the feasibility of each, including:

- Determine thru sampling, the opinions of professional persons working in the area of developmental disasbilities, parents of persons with developmental disabilities, and others on the feasibility and desirability of establishing such a nationwide information and referral system;
- Identify and describe anticipated consumer needs;
- Identify and describe the response by State agencies, developmental disability advocacy organizations, disability rights organizations, and others to the feasibility and desirability of establishing a nationwide information and referral system, including such agencies' and organizations' interest in participating in and coordinating with such a system;
- Indicate the scope of the data bases, including the catagories of information and comprehensiveness of the data to be gathered;
- Specify procedures to be used for collecting and updating data;
- Describe methods to be used to publicize the systems;
- Describe technical issues relating to the use of computers to store, retrieve, and communicate the information across a national network;
- Develop models for integrating information provided by existing local, State and regional systems; and
- Make recommendations to ADD/OHDS regarding the feasibility and desirability of various designs or models for establishing such a nationwide information and referral system.

B. Grantee Share of the Project

The non-Federal share must be at least 25 percent of the total cost of the proposed project (e.g., if the total program cost is $266, 666 the non-Federal share will be $66,666).

Part III. Criteria for Review and Evaluation of Applications

In considering how the grantee will carry out the responsibilities under Part II of this announcement, competing applications will be reviewed and evaluated against the following criteria:

A. Objectives and Need For This Assistance (10 Points)

State the specific objectives and needs addressed by the project in terms of its national or regional significance, its theoretical importance and its applicability to practices and

subordinate objectives of the project. Provide a discussion of the "state-of-the-art" relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. For demonstration, training and technical assistance, and evaluation projects, indicate goals or service objectives of the proposal. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning or demonstration studies must be summarized, evaluated and related to the proposed project.

B. Results or Benefits Expected (Beneficial Impact) (10 Points)—

This section must identify the results and benefits—for target groups and human services programs—to be derived from implementing the proposed project. The anticipated contribution to policy, practice, theory and/or research should be indicated.

C. Approach (Project Implementation Plan) (40 Points)

Tasks to be Performed

Provide major milestones of events, activities and products and a timetable for completion, including the time commitments of all key staff to individual project tasks.

Design and Methodology

This portion of the program narrative must identify the specific problem(s), issue(s), and objectives of the proposal addressed by the applicant agency and provide a detailed disussion of how the approach provided for will accomplish these project objectives. Also, the research methodology, demonstration plan, design of training program or other appropriate techniques to be used should be fully described.

Dissemination and Utilization

A description of steps to be taken to disseminate and promote the utilization of project products and findings using Federal and/or nonfederal resources. The specific audience to whom the products will be addressed must be specified.

D. Staffing and Management (20 points)

This section must address:

Staffing Pattern

Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contribution to be made by senior staff.

Competence of Staff

Indicate the qualifications of the project team, the variety of skills to be used, relevant research experience, educational background and the demonstrated ability to produce final results that are readily comprehensible and usable.

Adequacy of Resources

Specify the adequacy of the facilities, resources and organizational experience with regard to the tasks of the proposed project.

E. Budget Appropriateness and Reasonableness (20 points)

This section must address:

Budget

Related the proposed budget to the level of effort required to attain project objectives. Provide a cost/benefit analysis if possible. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Assurances

Discuss collaborative efforts with other agencies or organizations. Written assurances should be included with the application if available.

Authorship

The author(s) of the application must be clearly identified together with their current relationship to the applicant organizations and any future project role they may have if the application is funded.

Part IV. The Application Process

A. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by writing or telephoning: Judy Moore, PNS Coordinator, Administration on Developmental Disabilities, Program Development Division, HHH Building, Room 351D, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 245–1961.

B. Application Submission

One signed original and two copies of the grant application, must be mailed or hand delivered to: The Office of Human Development Services, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., HHH Building Room 349F, Washington, DC 20201.

In order to be considered for a grant under this program announcement, an application must be submitted on the forms and in the manner required by this announcement. The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria listed above. The Commissioner, ADD, determines the final action to be taken with respect to each grant application for this program. In addition to the results of the review, the Commissioner will also consider comments from Central and Regional Office staff in making final decisions.

After the Commissioner has made the final selection, unsuccessful applicants will be notified in writing of this final decision. The successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

D. Closing Date for Receipt of Applications

The closing date for receipt of applications under this program announcements is April 11, 1988.

1. *Mailed applications:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the HDS Grants Office or

b. Sent on or before deadline date, and received by the granting agency in time to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated *U.S.* Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier of the United States Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Applications submitted by other means:* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Acquisition and Assistance Management Branch Office during the normal working hours of 9:00 a.m. to 5:30 p.m. Monday through Friday.

3. *Late Applications:* Applications which do not meet criteria one or two above are considered late applications and will not be considered.

4. *Extension of deadlines:* OHDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc, or when there is widespread disruption of the mails. However, if OHDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under the Part IV narrative under OMB Control Number 0980–0016.

F. Notification Under Executive Order 12372

This program is covered under Executive Order 12372 "Intergovernmental Review of Federal Programs" and 45 CFR Part 100 "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Executive Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Nebraska, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these five areas need take no action regarding E.O. 12372. Applicants should contact their SPOCs as soon as possible to alert them to the prospective application and to receive any necessary instructions.

Applicants must submit any required material as early as possible so the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a. SPOCs will be notified of any applicant not indicating SPOC contact on the application, when SPOC contact is required. SPOCs have 60 days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due no later than April 25, 1988.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested clearly to differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Division of Grants and Contracts Management, Acquisition and Assistance Management Branch, Attn: Ms. Margaret A. Tolson, Grants Officer, 200 Independence Avenue SW, HHH Building Room 349–F, Washington, DC 20201.

A list of the State SPOC, is included at the end of this announcement.

(Catalog of Federal Domestic Assistance Program Number 13.631 Developmental Disabilities-Special Projects)

Date: January 28, 1988.

Robert E. Stovenour,

Deputy Commissioner, Administration on Developmental Disabilities.

Approved: February 7, 1988.

Sydney Olson,

Deputy Assistant Secretary for Human Development Services.

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905.

Alaska

None.

Arizona

Department of Commerce, State of Arizona.

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to: Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

Joe Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074.

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156.

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459.

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459; Tel. (203) 566–3410.

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204.

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Rm. 608, Atlanta, Georgia 30334, Tel. (404) 656–3855.

Hawaii

Roger A. Ulveling, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085.

Idaho

None.

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 728–8639.

Indiana

Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House,

Indianapolis, Indiana 46204, Tel. (317) 232–5604.

Iowa

A. Thomas Wallace, Iowa Dept. of Economic Development, Division of Community Progress, East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3864.

Kansas

Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Rm. 152–E, State Capitol Bldg., Topeka, Kansas 66612, Tel. (913) 296–2436.

Kentucky

Bob Leonard, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382.

Louisiana

Colby S. La Place, Assistant Secretary, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 324–9790.

Maine

State Planning Office, Attn: Intergovernmental Review Process/ Hal Kimbal, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154.

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490.

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan

Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530, Staff Contact: Don Bailey, Tel. (517) 334–6190

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

None

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Dean Olson, Director, Management and Program Analysis Div., Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Harold W. Juhre, Jr., New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Bill Robinson, Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699.

Oklahoma

Don Strain, Oklahoma Dept. of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrissburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2655

Note: Questions & correspondence concerning this State's review process should be directed to: Mr. Michael T. Marfeo, Review Coordinator.

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734–0435

South Dakota

Sue Korte, State Clearinghouse Coordinator, State Government

Operations, Second Floor, Capitol Building, Pierre, South dakota 57501, Tel. (605) 773–3661

Tennessee

Charles Brown, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–167683

Texas

Leon Willhite, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711

Note: Questions concerning this State's review process should be directed to: Intergovernmental Relations Division, Tel. (512) 463–1814.

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474

Washington

Washington Department of Community Development, ATTN: Washington Intergovernmental Review Process, Dori Goodrich, Coordinator, Ninth and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 586–1240

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industiral Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary James R. Krauser, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349.

Wyoming

Ann Redman, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

District of Columbia

Lovetta Davis, DC State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727–9111

Virgin Islands

Toya Andrew, Federal Program Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517

Puerto Rico

Ms. Patricia G. Gustodio, P.E., Chairman and Isael Soto Marrero, Director, Federal Proposal Review Office, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

American Samoa

None

Guam

Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

[FR Doc. 88–4049 Filed 2–24–88; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

Consensus Development Conference On Prevention and Treatment of Kidney Stones

Notice is hereby given of the NIH Consensus Development Conference on "Prevention and Treatment of Kidney Stones," sponsored by the National Institute of Diabetes and Digestive and Kidney Diseses and the NIH Office of Medical Applications of Research. The conference will be held March 28–30, 1988, in the Masur Aduitorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Urinary tract stones affect 328,000 Americans yearly and present a management challenge for most physicians. New, widely differing prevention and treatment strategies have radically changed the approach to urinary tract stones.

The purpose of this conference is to provide a forum to debate the ideal diagnostic evaluation of patients with stones and to assess the role of various treatment methods, including lithotripsy, percutaneous surgical procedures, and medical prevention. Therapeutic toxicities, side effects, and the management of asymptomatic stones also will be discussed. This conference will bring together biomedical scientists, clinicians, other health professionals, and members of the public. Following a day and a half of presentations by medical experts and audience discussion, a consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What are the methods of medical prevention, and how successful are they?
- What is the role of lithotripsy, and can it replace medical prevention?
- What are clinical and laboratory approaches for the evaluation of patients with stones?
- What are the directions for future research?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference aduience and invite comments and questions.

Information on the program may be obtained from: Barbara McChesney, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–6555.

Dated: February 16, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–3981 Filed 2–24–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting of the Acrylonitrile Study Liaison Group

Notice is hereby given of the meeting of the Acrylonitrile Study Liaison Group, National Cancer Institute, March 21, 1988, Building 31, C Wing, Conference Room 9 from 10 a.m. until 12 noon and Conference Room 10 from 12 noon until adjournment, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open from 10 a.m. to adjourment to discuss and finalize the interview form to be used by project industrial hygienists on site visits to the study plants. Attendance is open to the public but will be limited to space available.

Dr. David McB. Howell, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will provide substantive program information, upon request.

Dated: February 16, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88-3982 Filed 2-24-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Disease; National Kidney and Urologic Diseases Advisory Board Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on March 18-19, 1988, from 8 a.m. to approximately 5 p.m. each day at the Hyatt at Los Angeles Airport, 6225 West Century Boulevard, Los Angeles, California 90045. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Oral and written testimony will be received by the National Kidney and Urologic Diseases Advisory Board (NKUDAB) from members of the kidney and urologic disease communities on March 17, 1988, from 1 p.m. to 6 p.m. at the Los Angeles County Medical Association, 1925 Wilshire Boulevard, Los Angeles, California, 90057. This input will be applied to the development of the first national long-range plan to combat kidney and urologic diseases. If you are interested in presenting oral testimony, please submit a one-paragraph summary of your presentation to Mr. Raymond M. Kuehne, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852. All written testimony must be submitted to the Board office no later than March 11, 1988. Oral testimony will be limited to three to five minutes.

Additional NKUDAB public hearings, which will be announced individually, are scheduled for May 23, 1988, in Dallas, Texas; May 24, 1988, in Atlanta Georgia; June 8, 1988, in Boston, Massachusetts; June 9, 1988, in New York, New York; and June 23, 1988, in Chicago, Illinois. For more information, please contact the Board office.

Mr. Raymond M. Kuehne, Executive Director, National Kidney and Urologic Diseases Advisory Board, (address above) (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: February 16, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-3983 Filed 2-24-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for March 1988.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: A joint meeting of the: Cellular and Molecular Basis of Disease Review Committee—and the Genetic Basis of Disease Review Committee.

Executive Secretary: Ms. Linda Engel, Room 950, Westwood Building, Telephone: 301-496-7125.

Date of Meeting: March 8, 1988.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

Open: March 8, 1988, 8:30 a.m.-10:30 a.m.

Closed: March 8, 1988, 10:30 a.m.-5:00 p.m.

Name of Committee: Minority Access to Research Careers Review Committee.

Executive Secretary: Dr. Agnes Donahue, Room 949 Westwood Building, Telephone: 301-496-7585.

Dates of Meeting: March 10-11, 1988.

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

Open: March 10, 1988, 8:30 a.m.-10:30 a.m.

Closed:

March 10, 1988, 10:30 a.m.-5:00 p.m.

March 11, 1988, 8:30 a.m.-adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Executive Secretary: Dr. Rodney Ulane, Room 952 Westwood Building, Telephone: 301-496-4772.

Date of Meeting: March 14, 1988.

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

Open: March 14, 1988, 8:30 a.m.-1030 a.m.

Closed: March 14, 1988, 10:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-880, National Institute of General Medical Sciences, National Institutes of Health)

Date: February 16, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc 88-3984 Filed 2-24-88; 8:45 am]

BILLING CODE 4140-01-M

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Allocations to States of FY 1988 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed allocations to States of FY 1988 funds for refugee and entrant social services.

SUMMARY: This notice proposes the allocations to States of FY 1988 funds for social services under the Refugee Resettlement Program (RRP).

DATE: Comments on the allocations provided for in this notice will be

considered if received by March 28, 1988.

ADDRESS: Address written comments, in duplicate, to: Toyo Biddle, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 245–1924.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) expects to have available $65,694,000 in FY 1988 refugee/entrant social service funds. This amount is based upon the Continuing Resolution for FY 1988 (Pub. L. 100–202) and the accompanying Conference Report (H. Rept. 100–498).

Of the total of $65,694,000, the Director of ORR proposes to make available to States during FY 1988 approximately $55,500,000 (84.5%) under the allocation formulas set out in this notice. These funds would be made available for the purpose of providing social services to refugees and entrants. The final allocation amounts would be adjusted to total 85% of the available funds after taking into consideration any population adjustments (see Section VI, below).

All allocation figures include both refugees and Cuban/Haitian entrants since both populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refguees.)

Of the $55,500,000 covered by this notice, the Director proposes to allocate funds directly to States in the following manner:

- $53,000,00 would be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. 3 years or less as of October 1, 1987 (including a floor of $75,000 for States which have small refugee/entrant populations).
- $2,500,000 would be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a floor amount of $5,000 to States with small refugee/entrant populations) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) which amended section 412(c) of the Immigration and Nationality Act to require that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

The approximately $10,000,000 in remaining social service funds is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program.

The discretionary funds would support specific program activities designed to improve the delivery of services to refugees. Announcements of the availability of funding and grant application procedures for some projects have been issued (Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984; and Avilability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985). Other announcements will be made when initiatives are decided on.

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's or entrant's length of residence.

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that under current regulations services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice for the basic and MAA incentive allocations are subject (as were FY 1985–1987 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B)) As in previous years, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must meet either of the following two conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that two of the following three circumstances exist: The cash assistance rate for time-eligible refugees/entrants in the State is below the national average for all time-eligible refugees/entrants in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

2. In accordance with section 412(c)(1)(C) of the Immigration and Nationality Act, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98–473) amended section 412(e)(7)(A) of the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The

notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availablity in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these orgnaizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

2. That the MAA incentive allocation is subject to an included under ORR's requirement that 85% of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; *and*

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201, with a duplicate copy to the appropriate Family Support Administration (FSA) Regional Administrator. States must respond by May 27, 1988, in order to avail themselves of this special allocation.

II. [Reserved for discussion of comments in final notice.]

III. Proposed Allocation Formula

Of the funds available for FY 1988 for social services, $53,000,000 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1987, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1988 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1987, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1984. Figures on the numbers of entrants resettled are maintained by the ORR Florida office.

For fiscal year 1988, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1985, 1986, and 1987. Therefore estimates have been developed for the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1984, and September 30, 1987, who are thought to be living in each State as of October 1, 1987. The population estimates for the FY 1988 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

All participating States submitted data on their secondary in-migration on Form ORR-11 for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the State-total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in April-May 1987. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 12 States were adjusted in this manner. Finally, each State's population was deflated by approximately 0.68% to constrain the sum of the State figures to the known national total.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year regfugee/entrant population for each State.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1987, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); and the proposed amounts available as an incentive to States to use MAAs as service providers (col. 6).

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed Allocation Amounts

The following amounts are proposed for allocation for refugee social services. in FY 1988:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FISCAL YEAR 1988

State	Refugees	Entrants	Total population	Formula amount	Proposed allocation	MAA incentive allocation
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	726	0	726	$195,447	$195,447	$9,160
Arizona	2,590	0	2,590	697,257	697,257	32,679
Arkansas	523	0	523	140,798	140,798	6,599
California	71,969	72	72,041	19,394,256	19,394,256	908,959
Colorado	2,031	25	2,056	553,499	553,499	25,941
Connecticut	2,275	3	2,278	613,263	613,263	28,742
Delaware	74	0	74	19,922	75,000	5,000
District of Columbia	555	1	556	149,682	149,682	7,015
Florida	3,892	416	4,308	1,159,763	1,159,763	54,355
Georgia	2,906	62	2,968	799,019	799,019	37,448
Guam	34	0	34	9,153	75,000	5,000
Hawaii	936	0	936	251,982	251,982	11,810
Idaho	610	0	610	164,219	164,219	7,697
Illinois	7,902	8	7,910	2,129,462	2,129,462	99,802
Indiana	555	1	556	149,682	149,682	7,015
Iowa	1,591	1	1,592	428,584	428,584	20,087
Kansas	2,000	0	2,000	538,423	538,423	25,234
Kentucky	710	0	710	191,140	191,140	8,958
Louisiana	2,124	2	2,126	572,343	572,343	26,824
Maine	593	0	593	159,642	159,642	7,482
Maryland	3,048	1	3,049	820,825	820,825	38,470
Massachusetts	8,298	20	8,318	2,239,300	2,239,300	104,950
Michigan	3,323	0	3,323	894,589	894,589	41,927
Minnesota	6,239	2	6,241	1,680,148	1,680,148	78,744
Mississippi	301	0	301	81,033	81,033	5,000
Missouri	1,944	2	1,946	523,885	523,885	24,553
Montana	117	0	117	31,498	75,000	5,000
Nebraska	385	0	385	103,646	103,646	5,000
Nevada	666	122	788	212,139	212,139	9,942
New Hampshire	263	0	263	70,803	75,000	5,000
New Jersey	2,756	114	2,870	772,637	772,637	36,211
New Mexico	377	0	377	101,493	101,493	5,000
New York	14,270	102	14,372	3,869,106	3,869,106	181,335
North Carolina	1,518	0	1,518	408,663	408,663	19,153
North Dakota	239	0	239	65,342	75,000	5,000
Ohio	2,439	0	2,439	656,607	656,607	30,773
Oklahoma	1,342	0	1,342	361,282	361,282	16,932
Oregon	2,326	0	2,326	626,186	626,186	29,348
Pennsylvania	5,427	5	5,432	1,462,356	1,462,356	68,537
Rhode Island	1,541	4	1,545	415,932	415,932	19,494
South Carolina	205	4	209	56,265	75,000	5,000
South Dakota	311	0	311	83,725	83,725	5,000
Tennessee	2,154	0	2,154	579,881	579,881	27,178
Texas	12,240	2	12,242	3,295,686	3,295,686	154,460
Utah	1,555	1	1,556	418,893	418,893	19,632
Vermont	232	0	232	62,457	75,000	5,000
Virginia	5,513	2	5,515	1,484,701	1,484,701	69,584
Washington	7,982	0	7,982	2,148,845	2,148,845	100,711
West Virginia	26	0	26	6,999	75,000	5,000
Wisconsin	2,953	0	2,953	794,981	794,981	37,259
Wyoming	7	0	7	1,884	75,000	5,000
Total	194,593	972	195,565	52,648,323	53,000,000	2,500,000

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence through its ORR Regional Director. Requests will be evaluated according to a strict standard. The following is the type of evidence which would be considered appropriate:

- Documentation and discussion should be confined to the population entering during fiscal years 1985, 1986, and 1987, and should clearly identify what refugee or entrant groups are being discussed.
- Evidence should include a description of the information collection system(s) used by the State, including data sources, time period covered, timeliness, and validation procedures.
- Special studies and reports can be considered only if they are submitted for review.
- An example of acceptable evidence would be a list of refugees identified by name, alien number, date of arrival, and case size, if appropriate.

Any state evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Dr. Linda W. Gordon, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201. Telephone: (202) 245–1968.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: February 18, 1988.

Bill Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 88-4000 Filed 2-24-88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits; Mardy Darian et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-723962

Applicant: Mardy Darian, Vista, CA

The applicant requests a permit to import 12 radiated tortoises (*Geochelone* (=Testudo) *radiata*) to research the germination success rate of palm seeds (*Ravanea xerophila*) passed through the digestive tracks of these tortoises. No one, to date, has been successful in getting the seeds of this palm to germinate.

PRT-723940

Applicant: Riverbanks Zoo, Columbia, SC

The applicant requests a permit to reexport blood sera and skin biopsies of a white-cheeked gibbon (*Hylobates concolor leucogenys*) imported from Laos, to the Institut Curie, Paris, France for the purpose of determining the subspecies of this animal in order to enhance the propagation and survival of the species.

PRT-725072

Applicant: World Insectivorous Plants, Marietta, GA

The applicant requests a permit to sell in foreign commerce, artificially propagated green pitcher plants (*Sarracenia oreophila*) grown from seeds obtained from several locations prior to the date upon which this species was determined to be endangered. Disposal of these specimens would prevent hybridization and therefore facilitate efforts at this nursery to propagate green pitcher plants from seeds supplied by the Georgia Department of Natural Resources for restocking wild populations in Georgia.

PRT-724666

Applicant: Robert Moses, Houston, TX

The applicant requests a permit to import the trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Frank Bowker, Grahamstown, South Africa, for the purpose of enhancement of the survival of the species.

PRT-725169

Applicant: Robert Moore, New Baltimore, MI

The applicant requests a permit to purchase one male Asian elephant in interstate commerce from Lyle Rice, Sarasota, FL, to export and reimport for purposes of conservation education and propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: February 12, 1988.

Larry LaRochelle,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-4073 Filed 2-24-88; 8:45 am]

BILLING CODE 4310-AN-M

Bureau of Land Management

[OR-090-08-6310-12: GP8-077]

Emergency Closure of Public Lands and Access Roads; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access roads in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking and sightseeing, from February 23, 1988 through March 22, 1988. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as Clear Cut Unit No. 3 of Timber Sale Contract No. OR090-TS85-65 and are located as follows:

Willamette Meridian, Oregon

T. 15 S., R. 1 W.,
Sec. 33: Metes and Bounds within the SE¼NE¼;
Sec. 34: Metes and Bounds within the S½NW¼.

Containing approximately 31 acres.

All roads on the public lands listed above are closed as specified above, as are BLM Road No. 16-1-5.3 from its beginning in Section 5, T. 16 S., R. 1 W., W.M. to its junction with BLM Road No. 16-1-3 in Section 3, T. 16 S., R. 1 W., W.M., BLM Road No. 16-1-3 from its beginning to its junction with BLM Road No. 15-1-34.2 in Section 34, T. 15 S., R. 1 W., W.M., BLM Road No. 15-1-34.3 in its entirety located in Section 34, T. 15 S., R. 1 W., W.M., and BLM Road No. 15-1-34.2 in its entirety located in Section 34, T. 15 S., R. 1 W., W.M. Road Nos. 16-1-3, 15-1-34.2 and 15-1-34.3 are entirely located on public land, while Road No. 16-1-5.3 is located partially on public land and partially on private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and their subcontractors. In addition, the owners of the non-federal lands crossed by BLM Road No. 16-1-5.3 and those residing full time on such lands are exempt from the closure to the extent necessary to access and manage their lands. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0-7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access. In addition, the boundaries of the closed Clear Cut Unit are blazed, painted and posted.

The purpose of this emergency temporary closure is to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect persons from potential harm from logging operations.

EFFECTIVE DATES: February 23, 1988 through March 22, 1988.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, McKenzie Area Manager, Eugene District Office, at (503) 683–6988.

Dated: February 17, 1988.

Lee Lauritzen,

Area Manager.

[FR Doc. 88–3998 Filed 2–24–88; 8:45 am]

BILLING CODE 4310–33–M

[ID–010–08–4410–08]

Management Framework Plans; Idaho

AGENCY: Bureau of Land Management, Idaho, Interior.

ACTION: Notice of intent to initiate a plan amendment for the Boise District's Jarbidge Resource Management Plan (RMP) and prepare an Environmental Assessment (EA) to consider additional rangeland improvement projects to implement existing livestock, riparian and vegetation improvement objectives, and to consider designating the west side of a portion of Salmon Falls Creek Canyon as an Area of Critical Environmental Concern (ACEC); and to initiate a Plan Amendment for the Burley District's Twin Falls Management Framework Plan (MFP) to consider deisgnating the east side of a portion of Salmon Falls Creek Canyon as an Area of Critical Environmental Concern (ACEC).

SUMMARY: The Bureau of Land Management, Bosie District Office and Burley District Office, Idaho, propose to amend the Jarbidge Resource Management Plan (RMP) and Twin Falls Management Framework Plan (MFP). The amendment would identify additional rangeland improvement projects (spring/reservoir developments, pipelines, troughs, fences and cattleguards), and would change the designation of approximately 27 miles of Salmon Falls Creek Canyon from an Outstanding Natural Area (ONA) to an Area of Critical Environmental Concern (ACEC) in both the Boise and Burley Districts. All Jarbidge RMP objectives would remain the same as shown in the Record of Decision and all other decisions would remain the same. Designation of the ONA as an ACEC would meet a BLM procedural requirement, and would not be expected to result in any significant changes in management of the area.

The geographical area to be considered encompasses approximately 1,690,000 acres of public lands in the Jarbidge Resource Area of the Boise District and 7,300 acres of public land in the Snake River Resource Area of the Burley District. This land area covers all BLM lands from Anderson Ranch Reservoir in the north to the Humboldt National Forest boundary and Nevada state line to the south, and between King Hill Creek and Bennett Creek north of the Snake River and between 500 feet east of the east rim of Salmon Falls Creek Canyon and to the Bruneau River south of the Snake River.

The main issue identified for this amendment to date is how many and what types of additional projects are needed to meet existing objectives. In addition, Bureau guidance directs that any special designations, such as the Salmon Falls Outstanding Natural Area, be evaluated under the ACEC designation provisions whenever plan amendments are considered.

As interdisciplinary team consisting of range, wildlife, watershed, cultural, and planning specialists will prepare the amendment and environmental assessment.

Affected publics are invited to participate in the process. To date, no public meetings are scheduled; however, any public meetings which may be scheduled will be announced in the local media.

FOR FURTHER INFORMATION CONTACT: More detailed information can be obtained by contacting Earl Gary Carson, Jarbidge Area Manager at BLM, Boise District, 3948 Development Avenue, Boise, Idaho 83705 or at (208) 334–1582.

Date: February 18, 1988.

J. David Brunner,

District Manager.

[FR Doc. 88–3995 Filed 2–24–88; 8:45 am]

BILLING CODE 4310–GG–M

[NV–060–4322–02]

Battle Mountain District Advisory Council Meeting

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Thursday, March 31, 1988. The meeting will convene at 9:00 a.m. in the Shoshone-Eureka Conference Room at the Battle Mountain District Office in Battle Mountain, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Status of Rangeland Monitoring in the Tonopah Resource Area.
2. Status of Riparian Management in the Shoshone-Eureka Resource Area.
3. District Volunteer Program.

The meeting is open to the public. Interested persons may make oral statements between 1:00 and 1:30 p.m. on March 31, 1988. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m., March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635–5181.

Date signed: February 17, 1988.

Terry L. Plummer,

Battle Mountain, Nevada.

[FR Doc. 88–4010 Filed 2–24–88; 8:45 am]

BILLING CODE 4310–HC–M

[MT–070–07–4322–01–ADVB]

Butte District Montana Advisory Council; Open Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Wednesday and Thursday, March 16 and 17. The meeting will begin at 10:00 a.m. on March 16 in the Butte District conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The agenda will include: (1) Election of officers and (2) a discussion of alternative approaches to enhancing federal-private sector cooperation in various areas of mutural concern. Following a perspective on some particular areas of local interest by the district manager, the council will choose an appropriate subject or subjects and for the remainder of the meeting develop recommendations and suggestions for the district manager's consideration. The meeting will conclude by noon on the 17th with a discussion of the council's findings and recommendations.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements 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.

February 16, 1988.

Gerald L. Quinn,

Acting District Manager.

[FR Doc. 88–4011 Filed 2–24–88; 8:45 am]

BILLING CODE 4310–DN–M

[UT-020-88-4830-12; 1784]

Salt Lake District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Advisory council meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Salt Lake District Advisory Council will be held on March 29, 1988, beginning at 9:00 a.m. in the Conference Room of the Salt Lake District Office, 2370 South 2300 West, Salt Lake City.

The agenda of the meeting will include a detailed review of the proposed resource management plan for the Pony Express Resource Area (Utah, Tooele, and Salt Lake counties). Other agenda items include the grazing fee study update, election of Advisory Council chairman, livestock grazing issues, wild horse and burro adoptions, hazardous waste incinerator project in Tooele county, and military exercises on public land.

Anyone wishing to make a statement to the Council, must notify the Salt Lake District Manager at (801) 524–5348 before 4:00 p.m. on March 25, 1988.

Deane H. Zeller,

District Manager.

[FR Doc. 88–4009 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-940-08-4520-13; ES 037977, Group 59]

Louisiana; Filing of Plat of the Boundaries of the Chitimacha Indian Reservation, Sections 27 and 34

February 19, 1988.

1. The plat of the dependent resurvey of the Chitimacha Indian Reservation in sections 27 and 34 and the survey of the Estate of Henry Thomas, the Estate of Joseph Scypion, and the property claimed by Paul Abrams, these tracts or parcels having been excluded in the judgement in United States of America vs. Paul Abraham et al., No. 2256, dated May 28, 1952, Township 13 South, Range 9 East, Louisiana Meridian, Louisiana, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on April 4, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director of Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., April 4, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral, Survey and Support Services.

[FR Doc. 88–4055 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-GJ-M

[AZ-942-08-4520-12]

Arizona; Filing of Plats of Survey

February 17, 1988.

1. This plat of the following described land will be immediately placed in the open files in the Arizona State Office, Phoenix, Arizona, and will be available to the public as a matter of information. Copies of this plat and related field notes may be furnished to the public upon payment of the appropriate fee. Public notice, as provided in 43 CFR 1813.1–2 (BLM Manual, section 2097-Opening Orders) is required. The date selected for the filing shall be at least 45 days after the date the **Federal Register** notice is signed:

Gila and Salt River Meridian, Gila County

T. 11 N., R. 11 E.

2. This plat (in 2 sheets) representing the dependent resurvey of a portion of the south and west boundaries, the dependent resurvey of a portion of Homestead Entry Surveys 53, 418, and 420, and the survey of a portion of the subdivisional lines and a survey of subdivisons in section 32, and a metes-and-bounds survey in section 32, Township 11 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted February 11, 1988.

2. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. All inquiries relating to the land should be sent to Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 88–4006 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-32-M

[ID-060-08-4212-14; I-25277]

Realty Action; Noncompetitive Sale of Public Lands; Coeur d'Alene District, Shoshone County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public land in Shoshone County, Idaho.

DATE AND ADDRESS: The sale offering for parcel I–25277 will not be offered until at least on or before April 25, 1988, at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, ID 83814.

SUMMARY: The following-described lands have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), at not less than the appraised fair market value of $325.00. The subject parcel is described below:

Boise Meridian,

T. 48 N., R. 5 E.,

Sec. 16, SE¼SE¼SE¼ (a portion);
Sec. 21, NE¼NE¼ (a portion);
Sec. 22, NW¼NW¼ (a portion).

The subject lands described above are irregular in shape and are made up of three noncontiguous parcels equalling approximately .94 acres. Specific map location is available upon request.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent of 270 days from the date of publication, whichever occurs first.

Sale Procedures: The lands are proposed to be offered for sale to the Hecla Mining Company (Hecla) which plans to consolidate their existing ownership for greater management efficiency.

The sale is consistent with the Bureau's planning system. The lands are not needed for any resource program; are not suitable for management by the Bureau or another Federal department or agency; and have been determined to be suitable for disposal. After consulting with Shoshone County officials and members of the public, it has been determined that the public interest would be served by offering the lands for sale.

The patent, when issued, will contain certain reservations to the United States and be subject to existing rights-of-way.

Conveyance of the available mineral interest under section 209 of FLPMA will occur simultaneously with the sale of the lands. Acceptance of the direct sale offer by Hecla will constitute an application for conveyance of those mineral interests.

Hecla must file a relinquishment of mining claims, the Sno King and Sno

Queen (IMC 11407 and 11408), prior to patent issuance.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Eric Thomson, Realty Specialist, at (208) 765–1511.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, ID 83814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Date: February 17, 1988.

John B. O'Brien III,

Acting District Manager.

[FR Doc. 88–4053 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-GG-M

[NM-010-4210-20-RGRP]

New Mexico; Realty Action; Disposal of Public Lands (Cedar Crest Disposal Block)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice (correction). **Federal Register** Notice (53 FR 86) published in the issue dated Monday, January 4, 1988, is corrected as follows:

1. The legal description T. 11N., R. 5E., "Secs. 34 & 35 (portions thereof)" should read T. 11N., R. 5E., "Secs. 35 & 36 (unpatented SHC 1916)".

Dated: February 17, 1988.

Robert T. Dale,

District Manager.

[FR Doc. 88–3994 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-F-M

[UT-060-08-4212-14; U-58714]

Realty Action; Noncompetitive Sale of Public Land; San Juan County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U–58714, noncompetitive sale of public land in San Juan County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local use planning decisions based upon public input, resource considerations, regulations and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct sale) procedures 43 CFR 2711.3–3(a)(1). Sale will be at no less than the appraised fair market value of $2,600.

Salt Lake Meridian, Utah

T. 39 S., R. 13 E.,
Section 12, E½NE¼NW¼.
The described land aggregates 20 acres.

The land is being offered as a direct sale to San Juan County, Utah, in accordance with 43 CFR 2711.3–3(a)(1). San Juan County proposes to use the land for a solid waste disposal site. The parcel will be offered for sale to San Juan County not less than sixty (60) days after the date of publication of this notice.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; and State or State instrumentality authorized to hold property; or a corporation authorized to hold property; or a corporation authorized to own real estate.

Bid Standards

The Bureau of Land Management (BLM) reserves the right to accept or reject any and all offers, or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Publication of this notice in the **Federal Register** constitutes notice to the grazing permittee, Melvin K. Dalton, that his grazing lease is directly affected by this action. Specifically, the permitted Animal Unit Months (AUMs) will not be reduced because of this sale, but the land (acreage) will have to be excluded from the allotment effective upon issuance of the patent.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the San Juan Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, San Juan County road right-of-way U–62078.

DATES: For a period of up to and including April 11, 1988, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands, the terms and conditions of the sales, and the bidding instructions may be obtained from Dave Krouskop, Area Realty Specialist, San Juan Resource Area Office, 435 North Main, P.O. Box 7, Monticello, Utah 84535, (801) 587–2141, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Date: February 12, 1988.

Gene Nodine,

District Manager.

[FR Doc. 88–4054 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-020-4410-08]

Intent To Prepare a Resource Management Plan Amendment and Invitation To Participate in the Identification of Issues and Planning Critria; Lower Gila Resource Area, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a resource management plan amendment.

SUMMARY: The Bureau of Land Management, Lower Gila Resource Area, is preparing a plan amendment to the Lower Gila South RMP. This amendment is being done to comply with Pub. L. 99–606 which was passed on November 6, 1986, and requires the BLM to assume resource management responsibilities on the Barry M. Goldwater Air Force Range. This amendment will (1) propose to adopt, with modifications, the existing Luke Air Force Range Natural Resources

Management Plan (2) include an Environmental Assessment, and (3) guide resource management actions on approximately 1.8 million acres of withdrawn public lands within the Goldwater Range, The Code of Federal Regulations, Title 43, Subpart 1600 will be followed during this process. The public is invited to participate in the process beginning with the identification of issues and planning criteria in March, 1988.

DATE: Comments relating to the identification of issues and planning criteria will be accepted until April 18, 1988.

ADDRESS: Send comments to: Bureau of Land Management, Phoenix District Office, Attn: Bill Childress, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

FOR INFORMATION CONTACT: Gary Foreman, Team Leader, Lower Gila Resource Area, Telephone 602–863–4464.

SUPPLEMENTARY INFORMATION: The planning area is located in southwestern Arizona and contains 1.8 million acres of public land withdrawn to the Air Force for military use.

Public law 99–606 and military use of the range have placed certain constraints on the planning process and issues that can be included in the process. Uses and issues that cannot occur and will not be addressed in this amendment include livestock grazing, mineral exploration, leasing, and entry; wilderness, and open areas for off-road vehicles. Management concerns that will be addressed include but are not limited to wildlife management, cultural resource management, recreation, ACEC's, and other natural areas.

The amendment will be developed by an interdisciplinary team of resource specialists including a team leader, assistant team leader, realty specialist, wildlife biologist, cultural resource specialist, botanist, recreation specialist, and a soil, water, and air specialist.

There will be two open house public scoping meetings to obtain input on issues and planning criteria for the amendment. These meetings will be held in Gila Bend and Yuma, Arizona at the following times and locations.

March 16, 1988, 4 p.m.–8 p.m., Base theater, Gila Bend Air Force Auxillary Field, Gila Bend, Arizona.

March 17, 1988, 4 p.m.–8 p.m., Yuma District Office, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona.

Complete records of all phases of the planning process will be available for public review at the Lower Gila Resource Area Office, 2015 West Deer Valley Road, Phoenix, Arizona.

Henri R. Bisson,

District Manager.

Date: February 16, 1988.

[FR Doc. 88–3997 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-08-4220-10; Sacramento 054898]

Partial Termination of Proposed Withdrawal and Reservation of Land; California

February 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of the Bureau of Reclamation application Sacramento 054898 for the withdrawal and reservation of public land from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), was published in the **Federal Register** on January 7, 1959 (24 FR 173), and republished in the **Federal Register** on September 22, 1977 (42 FR 47883). The Bureau of Reclamation has cancelled its application as to the following described land:

Mount Diablo Meridian

T. 36 N., R. 7 W.,
Sec. 18, NE¼NE¼NE¼ and N½SE¼N E¼NE¼.

The area described contains 15 acreas in Trinity County.

DATE: At 10 a.m. on March 28, 1988, the lands described above will be relieved of their segregative effect in accordance with the regulations in 43 CFR 2310.2–1(c), and opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4815.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88–4056 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co., USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1092, Block 93, West Delta 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 Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on February 17, 1988.

ADDRESS: 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).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, 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.

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 December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 18, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–4057 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-MR-M

Lessees Numbered 5 Gas Royalty Act of 1987

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of enactment.

SUMMARY: The Notice to Lessees Numbered 5 Gas Royalty Act of 1987 (the Act) applies to the valuation of

natural gas production from onshore Federal and Indian oil and gas leases during the period January 1, 1982, through July 31, 1986, which was, prior to the Act, required to be valued under Sections I.A.2., II.A.2., and VI of "Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases No. 5" (NTL–5).

The purpose of this notice is to provide information to lessees and royalty payors about the provisions of the Act, the procedures MMS will use to value natural gas under the Act during the period January 1, 1982, through July 31, 1986, and the procedures MMS will use to process refunds under the Act.

DATE: All requests for refunds under the Act should be submitted by December 31, 1988, to the office identified below.

ADDRESS: All requests for refunds should be submitted in writing with supporting documentation to: Chief, Royalty Compliance Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 655, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432; Kenneth Moyers, Chief, Royalty Compliance Division, (303) 236–1100, (FTS) 776–1100; or John Price, Chief, Oil and Gas Valuation Branch, (303) 231–3392, (FTS) 326–3392.

SUPPLEMENTARY INFORMATION:

I. Background

Effective June 1, 1977, the Department of the Interior (Department) established the method of calculating royalties due on natural gas production from onshore Federal and Indian oil and gas leases by issuance of Notice to Lessees and Operators No. 5 (NTL–5), 42 FR 22610, May 4, 1977. Under certain provisions of NTL–5, the base value, for royalty purposes, was the higher of the price received under the gas sales contract or the highest applicable ceiling rate then established by the Federal Power Commission. With the passage of the Natural Gas Policy Act of 1978 (NGPA), the ceiling rate was subsequently interpreted to be the maximum lawful price established under the NGPA. The provisions of NTL–5 were suspended from application to natural gas produced from the Jicarilla Apache Indian Reservation in New Mexico, by **Federal Register** Notice issued August 9, 1977 (42 FR 40263).

Between 1982 and 1986, gas prices in many areas declined below the maximum lawful prices established under NGPA because of gas oversupply and changing market conditions. Effective August 1, 1986, the Department modified those sections of NTL–5 referencing the NGPA maximum lawful price. The modification permitted natural gas production on and after August 1, 1986, to be valued using the full range of authority under the existing royalty valuation regulations at Title 30 of the *Code of Federal Regulations*, Part 206 (30 CFR Part 206) rather than under the more restrictive provisions of NTL–5.

In January 1987 the Department proposed to modify NTL–5 retroactively for the period January 1, 1982, to July 31, 1986 (52 FR 1671, January 15, 1987). In response to controversy over the proposed retroactive modification, Congress passed the "Notice to Lessees Numbered 5 Gas Royalty Act of 1987." The bill was signed by the President of the United States on January 6, 1988, and became Pub. L. 100–234. The Act applies to natural gas production from onshore Federal and Indian oil and gas leases during the period from January 1, 1982, through July 31, 1986, which was required to be valued under Sections I.A.2., II.A.2., and VI of NTL–5.

II. Major Provisions of the Act

Major provisions of the Act include the following:

(a) Valuation

The Act specifies that the value, for royalty purposes, of natural gas production from onshore Federal and Indian oil and gas leases during the period January 1, 1982, through July 31, 1986, which would be subject to Sections I.A.2., II.A.2., or VI of NTL–5 during that period, will be the reasonable value determined consistent with the lease terms and the regulations codified at 30 CFR Part 206 (and 25 CFR Parts 211 and 212 for Indian leases) in effect at the time of production, rather than under the original provisions of NTL–5. For Indian leases, valuation must be consistent with the Secretary's trust responsibility.

(b) Written Documentation

In order to make a royalty value determination under the Act, the lessee or royalty payor must provide written documentation that:

(1) The Secretary determines be adequated;

(2) Existed at or near the time of sale;

(3) Shows the actual price received;

(4) Includes, but is not limited to, gas sales contracts, purchase statements, receipts, Minerals Management Service (MMS) oil and gas records, or other written documentation.

(c) Exception

The provisions of the act do not apply to any gas for which the lessee or royalty payor received less than the NGPA ceiling price due to a failure by the lessee or payor to pursue collection of the amount required under an enforceable contract. This exception is not meant to preclude contract modification such as the exercise of market-out provisions or those required by market conditions.

(d) Case-by-Case Audit of Federal and Indian Onshore Leases

The MMS is required to inform lessees and royalty payors of the provisions of the Act and to describe the procedures to collect underpayments or issue refunds. Notice is to be by publication in the **Federal Register** and by direct notice to all royalty payors of record. Any lessee or royalty payor entitled to a refund must provide written notice specifying the leases involved. The MMS, or States with delegated authority and Tribes with cooperative agreements, must audit the leases for which lessees have requested a refund. Audits of other leases will also be performed in accordance with other laws for the purpose of collecting underpayments or issuing refunds. When conducting these audits, the MMS will determine the amount of royalties due under this Act and other applicable law, and, where applicable, the amount of any refund due a lessee. The Secretary must demand payment of any underpayment discovered as a result of audit.

(e) MMS Notice

For any audit performed relative to this notice, MMS must issue a statement to the lessee containing:

(1) A statement of the amount of royalty paid under the provisions of NTL–5.

(2) A statement of additional royalties owed, or amount of refund due, and procedures by which any refund due will be provided.

(f) Report to Tribes

For Indian Tribal leases reviewed by MMS, a report must be provided to each Tribe and must state the difference between royalties computed in accordance with NTL–5 and royalties computed in accordance with the Act.

(g) Refunds of Royalties Previously Paid

Because of the changes to royalty valuation provided for in the Act, some lessees may be entitled to a refund of royalties paid at the previously required NGPA ceiling price.

The MMS cannot recoup any portion of a refund from the Indian lessor. Any refund due on Indian leases will be

paid by MMS from monies received under section 35 of the Minerals Lands Leasing Act of 1920, as amended, that would otherwise be deposited to miscellaneous receipts in the Treasury.

Any portion of a refund attributable to that share of the royalties previously distributed to a State will be recouped from future payments to that State. However, if the State's share of the refund exceeds 10 percent of the State's monthly disbursement, MMS shall recoup amounts in excess of the 10 percent from the disbursements to the State for the next month, subject to the same limitation.

Authority also is provided for refund of the Federal share of any overpaid royalties.

(h) Recordkeeping

Lessees and royalty payors are required to maintain records relating to production for the period January 1, 1982, to July 31, 1986, until notice is given that the records are no longer required.

(i) Savings Provision

Nothing in the Act affects the rights of any Indian lessor or any Indian or Federal lessee to bring any action in a court of competent jurisdiction.

III. Royalty Valuation Under the Act

The MMS will determine the royalty value under the terms of the Act on a case-by-case basis.

(a) Federal Leases

The Act provides generally that gas production from Federal leases will be valued in accordance with the lease terms (to the extent the lease may have a specific royalty value clause) and MMS regulations which were codified during the relevant period at 30 CFR Part 206.

The Act, which basically follows 30 CFR 206.103, provides as follows:

> In establishing the reasonable value, due consideration shall be given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices, and to other relevant matters. Under no circumstances shall the value of production of any of said substances for the purposes of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale thereof or less than the value computed on such reasonable unit value as shall have been determined by the Secretary. In the absence of good reason to the contrary, value computed on the basis of the highest price per thousand cubic feet or gallon paid or offered at the time of production in a fair and open market for the major portion of like-quality gas, or other products produced and sold from the field or areas where the leased lands are situated will be considered to be a reasonable value.

MMS will implement the Act's provisions in accordance with the following guidelines:

(1) For gas production which is sold pursuant to an arm's-length contract, the sponsors of the Act in the Senate recognized that MMS should, in most cases, accept as royalty value prices which were dictated by the market and which may be lower than the highest price paid for a major portion of production. See—*Cong. Rec.* S18631 (daily ed. Dec. 21, 1987—remarks of Senators Melcher, Johnston, and McClure). Thus, an arm's-length contract price will be considerd "good reason to the contrary" and the gross proceeds accruing to the lessee under its arm's-length contract will generally be accepted as value for royalty purposes.

(2) For natural gas sold pursuant to non-arm's-length contracts, the value for royalty purposes will be the highest price paid for a major portion of like-quality production from the same field or area (major portions analysis). If a major portion analysis cannot be performed, the value for royalty purposes will be determined by the gross proceeds accruing under comparable arm's-length contracts in the same field or area.

The value of production for calculating royalty shall never be less than the gross proceeds accruing to the lessee, or less than the value required by lease terms and regulations, including, where applicable, consideration of dual accounting. Royalty value will be determined considering any MMS-approved transportation and processing allowance.

(b) Indian Leases

The Act provides that in valuing gas production from Indian leases, the MMS must consider the same provisions described above for Federal leases, and must also consider the lease terms, the regulations codified during the relevant period at 25 CFR 211.13 and 212.16, and the Secretary's trust responsibility. Most Indian leases, and the regulations in 25 CFR, place added emphasis on a major portion analysis for determining royalty values.

For Indian leases, MMS will implement the Act's provisions in accordance with the following guidelines:

(1) For gas production sold pursuant to both arm's–length and non-arm's-length contracts, value for royalty purposes will be determined by a major portion analysis. If a major portion analysis cannot be performed, value for royalty purposes will generally be determined as follows:

(i) For gas sold pursuant to an arm's-length contract, value will be determined by the gross proceeds accruing to the lessee under its contract provided that the gross proceeds are equivalent to the gross proceeds accruing under other comparable arm's-length contracts in the same field or area.

(ii) For gas sold pursuant to arm's-length contracts where the lessee's gross proceeds are less than other comparable arm's-length contracts, and for gas sold pursuant to a non-arm's-length contract, value will be determined by the gross proceeds accruing under comparable arm's-length contracts in the same field or area.

(2) The value of production for calculating royalty will never be less than the gross proceeds accuring to the lessee or royalty payor. Royalty value will be determined considering MMS-approved transportation allowances.

(3) Most Indian leases require dual accounting for wet gas production. Where dual accounting is required to determine the value for royalty purposes, royalty will be based on the higher of:

(i) The value of the wet gas produced from the lease, adjusted for its Btu value.

(ii) The combined value of 100 percent of the residue gas and 100 percent of the extracted products, reduced by a processing allowance (not to exceed two-thirds of the value of each of the products) plus the value of any condensate recovered downstream of the royalty measurement point without resort to a manufacturing process.

IV. Refund Procedures

If a lessee paid royalty in accordance with the NGPA celing price provisions of NTL-5 during the relevant period, it may be entitled to a refund. Each applicant for a refund must submit a schedule for each production month, by lease and well, showing the royalty paid under NTL-5 (including adjustments and corrections) and the calculation of the royalty based on the royalty valuation guidelines specified above. As a minimum, the schedule should provide the following:

(a) The lease/AID number.

(b) The NGPA category of the gas.

(c) The location (defined by Section, Township, and Range) of the field or area.

(d) The gas volumes and pressure base.

(e) The Btu value for the reported pressure base.

(f) The date the contract was marketed out and supporting documention.

(g) The royalty rate for the lease(s).

(h) The calculation of the royalty paid under NTL-5 showing the NGPA base price for the reported pressure base, the Btu value adjustment factor, and any other pertinent data.

(i) The calculation of the royalty due under the Act showing the adjusted royalty value, the Btu value adjustment factor, and any other pertinent data.

(j) The net royalty overpayment.

The MMS will authorize a refund only if royalty valuation as calculated under the Act is also in compliance with Federal and Indian lease requirements and regulations, such as dual accounting.

The MMS must approve all refund requests resulting from this notice. After the refund request has been approved, instructions for obtaining a refund will be provided to the lessee or royalty payor.

All requests for refunds should be submitted by December 31, 1988, to the office identified in the ADDRESS section of this Notice.

V. Pending NTL–5 Appeals

All lessees or royalty payors that have appeals pending before the MMS Director or the Interior Board of Land Apeals concerning valuation issues under NTL-5 sections I.A.2, II.A.2, and VI, are also required to submit the information specified in Section IV of this notice. After receipt and reivew of submitted information, the lessee or royalty payor will be notified by MMS for each case whether the bonds can be released or reduced, whether additional royalties still may be due or whether refunds are due.

Date: February 22, 1988.

David W. Crow,

Deputy Director, Minerals Management Service.

[FR Doc. 88–4043 Filed 2–24–88; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Decision Not To Review Initial Determination Finding Six Respondents in Default

[Investigation No. 337–TA–267]

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination finding six respondents in default pursuant to Commission rule 210.25 (19 CFR 210.25).

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) finding six respondents in default pursuant to Commission rule 210.25.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1092.

SUPPLEMENTARY INFORMATION: On December 4, 1987, the presiding ALJ ordered respondents Bernhoff Laboratories, Inc., Farmos Group, Hauptmann Institute, Societa Italiana Chimici, and Topchem S.r.L to show cause why they should not be found in default. On December 10, 1987, the ALJ issued a similar order to respondent Kemyos Bio Medical Research S.r.L. No responses were received. Consequently, the ALJ issued the subject ID (Order No. 45) finding these respondents in default under Commission rule 210.25. No petitions for review or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 19, 1988.

[FR Doc. 88–4012 Filed 2–24–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Finance Applications To Consolidate, Merge or Acquire Control Under 49 U.S.C. 11343–11344

The following Applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6 MC–F–18963, filed January 6, 1988. Steven E. Weinstein (Weinstein) (359 Whitehall St., Atlanta, GA 30303)—Control—Air Travel Transportation, Inc. (Air Travel) (359 Whitehall St., Atlanta, GA 30303). Representative: Christopher J. McFadden, Bruce E. Mitchell, P.C., Fifth Floor, 3390 Peachtree Rd., Atlanta, GA 30326. Weinstein (a non-carrier individual) seeks authority to acquire control of Air Travel (MC–166420), a motor common carrier of passengers, through the purchase of 65 percent of Air Travel's common stock. Weinstein present holds a 56.6 percent interest in Sun Belt (MC–170971), a motor common carrier of passengers.

Decided: February 17, 1988.

By the Commission, Motor Carrier Board, Members Gagnon, Guyton and Barry

Noreta R. McGee,

Secretary.

[FR Doc. 88–3986 Filed 2–24–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Amendment of Consent Decree; Philadelphia, PA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 11, 1988, a proposed amendment to a consent decree in *City of Philadelphia* v. *EPA*, Civil Action Nos. 78–878, 78–1732, 78–1733, 78–1851 was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed amendment to the 1979 consent decree originally filed in the case requires the City of Philadelphia to construct necessary improvements to its sewage treatment facilities according to a schedule set out in the amendment. The amendment also requires the City to use the approximately $2.5 million of interest accured in the Trust Fund established under the 1979 consent decree, in addition to $240,000 in new penalty amounts, to conduct environmentally beneficial projects under the terms of the 1979 decree and EPA policy guidance.

The Department of Justice will receive comments relating to the proposed amendments to the consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *City of Philadelphia* v. *EPA*, DJ Ref. 90–5–1–1–929B.

The proposed amendment to the consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia Pennsylvania 19107. Copies of the proposed amendment to the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the amendment to the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $4.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–4058 Filed 2–24–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 87–49]

Gerald T. Hanley, M.D.; Revocation of Registration

On April 24, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gerald T. Hanley, M.D., Respondent, of 5720 West Fullerton, Chicago, Illinois, proposing to revoke DEA Certificate of Registration AH5383485, and to deny any pending applications for renewal of his registration on the ground that his continued registration was inconsistent with the public interest, based upon his improper handling of, and his personal use and abuse of, controlled substances.

Respondent, through counsel, filed a timely request for a hearing on the issues raised in the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner.

On September 24, 1987, Government counsel filed a motion for summary disposition on the ground that Respondent was no longer authorized to handle controlled substances in the state in which he was registered with the Drug Enforcement Administration. The Administrative Law Judge gave Respondent's counsel two opportunities to file an opposition to the motion for summary disposition. Respondent's counsel did not file any such objection.

The Administrative Law Judge issued her opinion on December 21, 1987, recommending the revocation of Respondent's registration and the denial of any pending applications for renewal. No exceptions were filed in response to the Administrative Law Judge's opinion and recommended decision.

After a careful review of the entire record, the Administrator adopts the Administrative Law Judge's recommendation.

The Administrator finds that the Illinois Department of Registration and Education indefinitely suspended Respondent's state medical and controlled substance licenses on or about August 18, 1987. Consequently, Respondent is no longer authorized to handle controlled substances in that state.

The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See *Fazal Ahmad, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). In the instant case, it is clear that Respondent is not currently authorized to handle controlled substances in the State of Illinois. Without the appropriate state authority to handle controlled substances, Respondent cannot hold a Federal controlled substance registration.

Since there is no dispute about Respondent's lack of state authority to handle controlled substances, the Administrative Law Judge properly granted the Government's motion for summary disposition. When no question of fact remains or when the facts are agreed, a plenary adversary administrative proceeding is not required, even though the status prescribes a hearing. In such situations, the rationale is that Congress did not intend for the Agency to perform the meaningless task of conducting a hearing when no issues remain in dispute. See *United States v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *N.L.R.B. v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, M.D.*, Docket No. 77–29, 43 FR. 11873 (1978); *Philip E. Kirk, M.D.*, Docket No. 82–36, 48 FR 32887 (1983), aff'd *sub. nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Therefore, based upon Respondent's lack of state authority to handle controlled substances, the Administrator concludes that Respondent's DEC Certificate of Registration must be revoked. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AH5383485, previously issued to Gerald T. Hanley, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective February 25, 1988.

John C. Lawn,

Administrator.

Dated: February 18, 1988.

[FR Doc. 88-3978 Filed 2-24-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following package is being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Financial Performance Report Survey

Abstract: This survey is to determine ways in which NCUA can make the Financial Performance Report more useful as a management tool for credit union management.

Frequency: Credit unions selected to participate in this survey will be requested to complete the survey on a one time basis.

Burden: The average time to complete the survey is 30 minutes.

Respondents: Selected federal credit unions, federally insured state chartered credit unions participating non-federally insured state chartered credit unions complete and will submit the subject report.

OMB Desk Officer: Robert Fishman.

Copies of the above information collection clearance package may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357-1055.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Building, Room 3208, Washington, DC 20503.

Date: February 18, 1988.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 88-3999 Filed 2-24-88; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for The Arts Dance Advisory Panel; Meeting

Pursuant to section 10(a)2) of the Federal Advisory Committee Act) Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on March 14-15, 1988 from 9:00 a.m.—5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 14, 1988, from 9:00 a.m.—5:30 p.m., and on March 15, 1988, from 10:00 a.m.—5:30 for policy issues and guidelines discussion.

The remaining sessions of this meeting on March 15, 1988 from 9:00 a.m.—10:00 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

February 19, 1988.

[FR Doc. 88-3992 Filed 2-24-88; 8:45 am]

BILLING CODE 7537-01-M

National Endowment on the Arts

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places/Design Arts-Visual Arts Collaboration Initiative) to the National Council on the Arts, will be held on March 15, 1988 from 9:00 a.m.-5:30 p.m., and on March 16, 1988 from 9:00 a.m.-6:00 p.m., and on March 17, 1988 from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

February 19, 1988.

[FR Doc. 88-3993 Filed 2-24-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-280 and 50-281]

Environmental Assessment and Finding of No Significant Impact; Virginia Electric and Power Co. Surry Power Station, Unit Nos. 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to Virginia Electric and Power Company (the licensee), for the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The following exemptions would be granted from the requirements of Sections III.G, III.J and III.L of Appendix R to 10 CFR Part 50:

1. Containment Incore Instrument Tunnels (Fire Areas 15 and 16). An exemption was requested from the specific requirement of Section III.G.2.d to the extent that less than 20 feet of separation exists between redundant excore neutron flux detector cables in these areas.

2. Separation of Instrumentation Inside the Containments (Fire Areas 15 and 16).

An exemption was requested from the specific requirement of Section III.G.2.d to the extent that intervening combustibles exist between redundant cables and equipment separated by 20 feet or by radiant energy shields.

3. Emergency Lighting in the Containments, Main Control Room, and in Exterior Access Routes.

Exemptions were requested from the specific requirement of Section III.J to the extent that it requires 8 hour emergency lighting in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

4. Refueling Water Storage Tank.

An exemption was requested from the specific requirement of Section III.L.2.d to the extent that process monitoring is not capable of providing direct readings of process variables necessary to perform and control required safe shutdown functions.

5. Redundant Circuits in a Manhole Adjacent to Fuel Oil Pumphouse Room 2 (Fire area 18B).

An exemption was requested from the specific requirement of Section III.G.2.a to the extent that cables of redundant trains are not separated by a fire barrier having a 3 hour fire resistant rating.

In summary, exemptions were requested from the requirement of separating cables and associated nonsafety circuits of redundant trains by 3 hour rated fire barriers as discussed in Section III.G.2.a of Appendix R, and from providing horizontal separation of more than 20 feet with no intervening combustibles as required by Sections III.G.2.b and III.G.2.d. In addition, exemptions were requested from the emergency lighting requirements of Section III.J. Also, an exemption was requested from the requirement of providing direct reading of process variables as discussed in Section III.L.2.d.

Equivalent levels of protection for the items specified above would be provided by the licensee.

The Need for the Proposed Action

The proposed exemptions are needed in order to permit the licensee to use alternate fire protection configurations that achieve an equivalent level of safety compared to that attained by compliance with Sections III.G, III.J and III.L of Appendix R.

Environmental Impact of the Proposed Action

The proposed exemptions would not degrade the level of safety attained by compliance with the rule and there would be no change in accident doses to the environment. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined; no do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts associated with fire protection modifications and compliance with the rule would accrue unreasonable costs to the licensee without an increase in safety.

Alternative Use of Resources

The action does not involve the use of resources not previously considered in the Final Environmental Statements for the Surry Power Station, Units No. 1 and No. 2.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemptions from 10 CFR Part 50, Appendix R, Sections III.G, III.J and III.L, dated July 6, 1984, as revised by letters dated November 30, 1984, April 10, 1986, September 30, 1986 and October 16, 1987, which are available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC., and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 18th day of February 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects–1/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–4018 Filed 2–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Byproduct Material License No. 12–01067–07; Docket No. 30–1391–SC; ASLBP No. 88–565–01–SC]

Edward Hines, Jr. Medical Center (Veterans Administration); Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding:

Edward Hines, Jr. Medical Center (Veterans Administration)

Byproduct Material License No. 12–01087–07

The presiding officer is being designated in response to a request for hearing filed on September 22, 1987, by Dr. Maynard L. Freeman pursuant to the provisions of an "Order to Show Cause Why License Should Not Be Modified, Effective Immediately" issued August 24, 1987, by the Deputy Executive Director for Regional Operations. 52 FR 32623 (1987). The Order amended License No. 12–01087–07 by adding the condition that Dr. Freeman shall be removed from all licensed activities.

The presiding officer in this proceeding is The Honorable Morton B. Margulies, Administrative Law Judge.

All correspondence, documents and other materials shall be filed with Judge Margulies in accordance with 10 CFR 2.701. His address is: Administrative

Law Judge Morton B. Margulies, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 18th day of February, 1988.

[FR Doc. 88-4071 Filed 2-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335-OLA; ASLBP No. 88-560-01-LA]

Florida Power and Light Co.; Scheduling Oral Argument on Intervention and Contentions

February 18, 1988.

Before Administrative Judges B. Paul Cotter, Jr., Chairman, Glenn O. Bright, and Dr. Richard F. Cole.

On January 15, 1988, Petitioner Campbell Rich mailed a pleading titled "Request for Hearing and Petition for Leave to Intervene" (Petition) in the captioned proceeding. The Petition was filed after negotiations between Petitioner and Applicant, Florida Power and Light Company, (St. Lucie Plant, Unit No. 1) failed to resolve Petitioner's concerns set out in a letter dated September 30, 1987. *See* this Board's Memorandum and Order dated November 12, 1987 (unpublished).

Mr. Rich contends that the public health and safety will not be adequately protected in connection with Applicant's request to amend its license to expand the spent fuel pool at its St. Lucie Plant, Unit No. 1. The amendment would authorize a spent fuel pool storage capacity increase from 706 to 1706 spent fuel assemblies. Both Applicant and the Nuclear Regulatory Commission Staff have answered the Petition, contesting some or all of the contentions set out therein.

Accordingly, the Board will hold oral argument on the Petition and Answers on March 29, 1988, commencing at 9:00 a.m. The argument will be held in the Horizon South Room on the 8th Floor of the Sheraton Beach on Hutchinson Island, 10978 South A1A, Jensen Beach, Florida 34957. At that time Petitioner can respond to the objections set out in the answers of Applicant and Staff. The Board will issue its ruling on all matters within two weeks thereafter.

The public is invited to attend the prehearing conference. Oral limited appearance statements will be heard at the conference if time permits. Written limited appearance statements may be submitted to the Board at the conference or mailed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman Administrative Judge.

Dated at Bethesda, Maryland, this 18th day of February, 1988.

[FR Doc. 88-4072 Filed 2-24-88; 8:45 am]

BILLING CODE 7590-01-M

Order Modifying General License Issued to Minnesota Mining and Manufacturing Co.

AGENCY: Nuclear Regulatory Commission.

ACTION: Order Modifying General License.

SUMMARY: The general license issued pursuant to 10 CFR 31.5 is being modified effective February 18, 1988, with respect to the use of all polonium-210 static elimination devices distributed by Minnesota Mining and Manufacturing Company (3M). General licensees in possession of such devices are ordered to suspend use and return them to 3M in accordance with a prescribed schedule. The modification order will remain in effect until further notice by the Commission.

FOR FURTHER INFORMATION CONTACT: Operations Center, U.S. Nuclear Regulatory Commission, area code 202-951-0550 (open 24 hours per day).

Order Modifying General License

I

Minnesota Mining and Manufacturing Company (3M or Licensee) is the holder of byproduct material licenses issued by the Nuclear Regulatory Commission (the Commission or NRC) pursuant to 10 CFR Part 30. License No. 22-00057-06 authorizes the Licensee to use a variety of radionuclides, including polonium-210 (Po-210), and to conduct a variety of activities with these materials including manufacturing, testing, installing and repairing radioactive sources, and the devices in which they are used.

License No. 22-00057-32G, issued pursuant to 10 CFR Parts 30 and 32, authorizes the Licensee to distribute Po-210 sources for use in static elimination devices to persons generally licensed in accordance with the provisions of 10 CFR 31.5.

II

On January 25, 1988, these 3M licensees were amended by an immediately effective Order which, among other things, suspended the authority of 3M to distribute Model Nos. 902, 902F, 906, and 908 Po-218 static elimination devices.

Subsequent to issuing the January 25, 1988 Order, the NRC received a list from 3M of general licensees who possess the above-described static elimination devices. Included in the list were general licensees which appeared to be manufacturing products or packages for products such as food, beverages, pharmaceuticals and cosmetics which are to be consumed by or applied to humans. NRC inspectors reviewing records during the week of January 24, 1988 at the 3M Center in St. Paul, Minnesota also determined that there were indications of a number of failed devices during the previous year that included devices used at facilities which manufacture products for human consumption. Further investigation at general licensee facilities conducted by 3M, NRC and State personnel revealed additional instances of device failure including some located at beverage and food processing plants.

On February 5, 1988, 3M issued a letter to all of its customers using the above-specified models of the device, directing such users to remove the devices from applications related to the packaging of food, beverages, pharmaceuticals, or cosmetics and to return them to 3M. 3M's action was confirmed by Order dated February 5, 1988. The February 5, 1988 Confirmatory Order modified 3M's License to require 3M to inform all users of its Model 902, 902F, 906, and 908 static eliminators involved in the packaging of food, beverages, pharmaceuticals and cosmetics that it was withdrawing these devices from service and that such devices were to be returned to 3M.

Subsequent to issuing the February 5, 1988 Confirmatory Order, the NRC received reports of additional failed devices. Some of the newly reported failures involve model numbers not specified in the January 25, 1988 Order. For example, Model No. 907 static elimination devices, which utilize blown rather than compressed air, have been found leaking in at least 3 cases. In addition, bar-type static elimination devices, specifically Model No. 210, have been reported to have leaked. Some of these blown-air and bar-type devices are used in plants that manufacture products and packages, or package materials for products, which would constitute a direct pathway for human exposure if contaminated.

On February 8, 1988, 3M submitted a brief report of its work under the Order of January 25. The NRC met with 3M at Region III offices on February 11, 1988,

to discuss these results and to hear of 3M's proposed plan of action.

Based on information reviewed to date, static eliminators have experienced frequent failures in what appear to be normal and customary industrial environments (i.e., under ordinary conditions of use). Such failures are in direct conflict with the licensing basis of these devices including the requirements of 10 CFR 32.51(a)(2)(i) which states, in part, that "[u]nder ordinary conditions of handling, storage and use of the device, the byproduct material contained in the device will not be released * * *."

On February 12, 1988, the 3M licenses were further amended by an immediately effective Order which, among other things, suspended the authority of 3M to distribute any Po–210 static elimination devices involved in the production or packaging of food, beverages, pharmaceuticals, or cosmetics, and required 3M to recall these devices by March 2, 1988.

Subsequent to issuing the February 12, 1988 Order, the NRC has continued to receive reports of additional failed devices. Some of the newly reported failures are located in high public access areas such as shopping malls.

Based on the information presented above, the NRC no longer has confidence that the licensing basis of Po–210 static elimination devices authorized for distribution to general licensees by License No. 22–00057–32G meets the requirements of 10 CFR 32.51. Accordingly, the Commission finds that the public health, safety, and interest require that the actions specified in Section III of this Order be made effective immediately.

The NRC has been informed that some of these Po–210 static eliminators are used in industrial or commercial service where suppression of static electricity is needed for workplace safety where significant fire, explosion or other hazards might otherwise exist. Therefore, in exercising the necessary radiological safety precaution of removing these devices from use, the NRC recognizes the need to consider the possibility of at least temporarily approving continued use where competing safety risks are involved and process surveillance is sufficient.

III

Accordingly, pursuant to section 81, 161b, and 161i of the Atomic Energy Act of 1954, as amended, and 10 CFR 2.204 and Parts 30 and 31 of the Commission's regulations, It Is Hereby Ordered, Effective February 18, 1988, that:

A. The general license in 10 CFR 31.5 is suspended immediately with respect to the use of any Po–210 static elimination device manufactured by 3M and distributed to general licensees pursuant to 3M License Nos. 22–00057–06 and 22–00057–32G, except as provided in Paragraph C. below.

B. The general license in 10 CFR 31.5 is further modified to require general licensees possessing the static elimination devices described in Paragraph A. above to return them, within 90 days of the date of this Order to 3M in accordance with instructions provided by 3M, except as provided in Paragraph C. below.

C. If a general licensee determines that use of 3M static elimination devices is essential for safety, the general licensee may seek prior written approval from the appropriate NRC Regional Administrator or Agreement State for temporary continued use under surveillance to be specified. Oral requests for approval must be confirmed in writing. This provision does not apply to use of the devices in the production or packaging of food, beverages, pharmaceuticals, medical devices, or cosmetics.

The Director, Office of Nuclear Material Safety and Safeguards, may in writing relax or rescind any of the above conditions for good cause shown by the licensee.

IV

Pursuant to the Atomic Energy Act of 1954, as amended, a general licensee subject to this Order or any other person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement at the same address. If a person other than a general licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the person's interest is adversely affected by this Order. A request for a hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested by a general licensee or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearings is whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Dated at Rockville, Maryland, this 18th day of February, 1988.

[FR Doc. 88–4015 Filed 2–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 030–04951 and 030–04971; License Nos. 22–00057–06 and 22–00057–32G]

Notice of Orders Served; Minnesota Mining and Manufacturing Co.

In the matter of Minnesota Mining and Manufacturing Company, 3M Center 220–2E–02, St. Paul, MN 55144–1000.

This Notice is made to inform the public of three Orders which were served on the Minnesota Mining and Manufacturing Company (3M) on January 25, February 5, and February 12, 1988. Copies of those Orders are an Appendix to this Notice.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Appendix:
3M Orders

Dated at Rockville, Maryland this 19th day of February 1988.

Order Modifying License, Effective Immediately

I

Minnesota Mining and Manufacturing Company (3M; licensee) is the holder of several byproduct material licenses issued by the Nuclear Regulatory Commission (the Commission or NRC) pursuant to 10 CFR Part 30. License No. 22–00057–06 was issued on February 17, 1964, was most recently amended on May 6, 1987, and expires on May 31, 1992. This license authorizes the licensee to use a variety of radionuclides, including polonium-210 (Po-210), and to conduct a variety of activities with these materials including manufacturing, testing, installing and repairing radioactive sources, and the devices in which they are used.

License No. 22–00057–32G was issued on July 12, 1965, was most recently amended on May 5, 1987, and expires on July 31, 1990. This license, issued pursuant to 10 CFR Part 30 and § 32.51, authorizes the licensee to distribute Po-210 sources for use in static elimination devices to persons generally licensed in accordance with the provisions of 10 CFR 31.5. The authorized devices

include Model Numbers 902, 902F, and 905–909, inclusive (the 900 series).

II

Ashland Chemical Company (ACC), Easton, Pennsylvania, uses Po-210 static elimination devices under the general license provisions of 10 CFR 31.5 and thus is a general licensee. ACC's Po-210 devices were manufactured and distributed by 3M.

On January 22, 1988, ACC's radiation safety consultant notified NRC's Regions I office that he had detected alpha contamination on worker clothing at its electronic chemicals packaging plant in Easton, Pennsylvania. (These clothes are worn by ACC employees while working in the ACC plant and are not worn to and from work.) Contamination was also detected in the plant areas in the vicinity of 3M series 900 high pressure static elimination air guns, the apparent source of the contamination. ACC uses the series 900 static elimination air gun to remove dust particles from packaging bottles. These 3M air guns, which incorporate a radioactive source containing from 10 to 40 millicures of Po-210, showed significant levels of alpha contamination. Po-210 decays by emission of a 5.3 MeV alpha particle, has a physical half-life of 138 days, and, in these sources, is in the form of ceramic microspheres attached to an epoxy backing and overcoated with an epoxy binder.

ACC had engaged the services of a radiation safety consultation after one of its customers inquired about possible alpha contamination in chemicals supplied by ACC. The customer's representative had visited ACC on January 21, 1988, identified the presence of alpha contamination at ACC's Easton plant, and reported low-level alpha contamination on his person and clothing as a result of his visit to ACC.

ACC also uses 3M static elimination air guns at its plants in Columbus, Ohio, Dallas, Texas, and Newark, California. As a result of the findings at its Easton plant, ACC had these plants surveyed. The Newark and Columbus plants were found not to be contaminated, but the Dallas plant was contaminated and six of its twelve 3M series 900 static elimination air guns showed evidence of leakage. ACC plans to test ACC employees at its Easton and Dallas plants for the presence of Po-210.

NRC inspectors arrived at the Easton plant on January 22, 1988, confirmed the presence of the radioactive contamination, and are assessing the adequacy of ACC's and 3M's responses to this event. The Texas Bureau of Radiation Control was informed of the findings at the Dallas plant and its inspectors will assess ACC's response to that event.

As of January 25, 1988, the root causes of these contamination incidents have not been identified. These causes could be related to manufacturing defects, environment and conditions of use, and/or other unknown factors. The devices of concern appear to be Model Nos. 902, 902F, 906, and 908 that use compressed air, rather than ambient blown air. The total number of these static elimination devices being used by general licensees is not presently known to NRC. The facts demonstrate an immediate potential for radiological hazard to personnel working with the static eliminators and others present in the area of use. Accordingly, the Commission finds that the public health, safety, or interest requires this Order to be made effective immediately.

III

Accordingly, in view of the foregoing and pursuant to sections 81, 161b, 161c, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30, 31, and 32, *It is hereby ordered, effective immediately, that the license numbers 22–00057–06 and 22–00057–32G are modified as follows:*

A. The authority to distribute Model Nos. 902, 902F, 906, and 908 polonium 210 static elimination devices (the devices), is suspended until the Regional Administrator, Region III has approved your response to paragraph E.

B. Immediately inform users or persons to whom the devices have been distributed, including NRC and Agreement State licensees, persons in the United States exempted from the NRC licensing requirements, e.g. the Department of Energy, and distributors outside the United States, of:

(1) The incidents identified in Part II of this Order;

(2) Any appropriate information thus far developed related to the possible cause of the leakage/contamination (device failure);

(3) Instructions to promptly notify 3M if there is any reason to believe or suspect the devices in their possession might also have failed; and

(4) The requirements of 10 CFR 31.5(c)(5).

C. A copy of the information notice in paragraph B above shall be sent to the Regional Administrator, Region III, along with a list of users or persons to whom the notice is sent (unless the list has been previously supplied to the Administrator). Should reports of potential or suspected device failure from users or other persons be received, 3M shall notify the Regional Administrator, Region III of the report within 24 hours.

D. Immediately commence testing of the devices presently in use sufficient to define the potential scope of the device failure problem and, based on the data acquired along with any other relevant information developed through analysis, submit within 14 days to the Regional Administrator, Region III, a plan for approval of an expanded test and user information program which provides a high degree of assurance that additional failed devices, if any, will be identified. The plan should be accompanied by the results of test data developed during the 14 day period, any other relevant information and a justification for the plan.

E. Analyze the causes of device failure described in Part II of this Order and any other device failures subsequently identified, as a result of implementing the plan in paragraph D above and report to the Regional Administrator, Region III, the detailed technical results of the analysis and the corrective actions proposed including any limitations on devices already distributed.

The Regional Administrator, Region III, may relax or rescind any of the above conditions or requirements upon good cause shown.

IV

Pursuant to 10 CFR 2.204, the licensee or any other person adversely affected by this Order may request a hearing within 20 days of the date of this Order.

Any request for a hearing shall be submitted to the Director of the Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings at the same address. A copy of any request shall be sent to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the petitioner's interest is adversely affected by this Order. A request for a hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held the issue to be

considered at such hearing is whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of January, 1988.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Materials Safety and Safeguards.

Confirmatory Order Modifying License, Effective Immediately

I

Minnesota Mining and Manufacturing Company (3M; licensee) is the holder of several byproduct material licenses issued by the Nuclear Regulatory Commission (the Commission or NRC) pursuant to 10 CFR Part 30. License No. 22–00057–06 was issued on February 17, 1964, was most recently amended on May 6, 1987, and expires on May 31, 1992. This license authorizes the licensee to use a variety of radionuclides, including polonium–210 (Po–210), and to conduct a variety of activities with these materials including manufacturing, testing, installing and repairing radioactive sources, and the devices in which they are used.

License No. 22–00057–32G was issued on July 12, 1965, was most recently amended on May 5, 1987, and expires on July 31, 1990. This license, issued pursuant to 10 CFR Parts 30 and 32.51, authorizes the licensee to distribute Po–210 sources for use in static elimination devices to persons generally licensed in accordance with the provisions of 10 CFR 31.5. The authorized devices include Model Numbers 902, 902F, and 905–909, inclusive (the 900 series).

On January 25, 1988, these licenses were modified by an immediately effective Order.

II

As more fully described in the Order Modifying License, Effective Immediately, dated January 25, 1988, the NRC determined that the use of the above-described static elimination devices has resulted in significant alpha contamination on worker clothing and in a number of facilities. As of January 25, 1988, the root causes of these contamination incidents had not been identified. These causes could be related to manufacturing defects, environment and conditions of use, and/or other unknown factors. The devices of concern appear to be Model Nos. 902, 902F, 906, and 908 that use compressed air, rather than ambient blown air. The total number of these static elimination devices being used by general licensees is not presently known to NRC. The facts demonstrate an immediate potential for radiological hazard to personnel working with the static eliminators and others present in the area of use. Accordingly, the Commission found that the public health, safety, or interest required that the January 25, 1988 Order be made effective immediately. The Order modified 3M's license as follows:

A. The authority to distribute Model Nos. 902, 902F, 906, and 908 polonium 210 static elimination devices (the devices), is suspended until the Regional Administrator, Region III has approved your response to paragraph E.

B. Immediately inform users or persons to whom the devices have been distributed, including NRC and Agreement State licensees, persons in the United States exempted from the NRC licensing requirements, e.g. the Department of Energy, and distributors outside the United States, of:

(1) The incidents identified in Part II of this Order;

(2) Any appropriate information thus far developed related to the possible cause of the leakage/contamination (device failure);

(3) Instructions to promptly notify 3M if there is any reason to believe or suspect the devices in their possession might also have failed; and

(4) The requirements of 10 CFR 32.5(c)(5).

C. A copy of the information notice in paragraph B above shall be sent to the Regional Administrator, Region III, along with a list of users or persons to whom the notice is sent (unless the list has been previously supplied to the Administrator). Should reports of potential or suspected device failure from users or other persons be received, 3M shall notify the Regional Administrator, Region III of the report within 24 hours.

D. Immediately commence testing of the devices presently in use sufficient to define the potential scope of the device failure problem and, based on the data acquired along with any other relevant information developed through analysis, submit within 14 days to the Regional Administrator, Region III, a plan for approval of an expanded test and user information program which provides a high degree of assurance that additional failed devices, if any, will be identified. The plan should be accompanied by the results of test data developed during the 14 day period, any other relevant information and a justification for the plan.

E. Analyze the causes of device failure described in Part II of this Order and any other device failures subsequently identified, as a result of implementing the plan in paragraph D above and report to the Regional Administrator, Region III, the detailed technical results of the analysis and the corrective actions proposed including any limitations on devices already distributed.

The Regional Administrator, Region III, may relax or rescind any of the above conditions or requirements upon good cause shown.

III

Subsequent to issuing the January 25, 1988 Order, the staff received a list from 3M of general licensees which possess static eliminator devices affected by the Order. Included in the list were general licensees which appear to be manufacturing products or packages for products such as food, beverages, pharmaceuticals, cosmetics, medical products and other products which are to be consumed by or applied to humans. NRC inspectors reviewing records during the week of January 24, 1988 at the 3M Center in St. Paul, Minnesota also determined that there were indications of a number of failed devices during the previous year, including devices used at facilities which manufacture products for human consumption. Further inspection and investigation at general licensee facilities conducted by 3M, NRC and State personnel revealed additional instances of device failure including some located at beverage and food processing plants.

Because of the large number of general licensees which use the affected static eliminators and the variety of products for which these devices are used in the manufacturing process, the full dimensions of the potential radiological risk resulting from device failure cannot be fully established until further inspections, investigations, analyses and assessment are conducted. However, the failure of such devices at such plants can result in contamination of products which constitutes a direct pathway for human exposure. In order to permit the completion of the requisite evaluations and to avoid possible contamination of products intended for human consumption, we have determined that certain static elimination devices should be recalled by the licensee.

On February 5, 1988, the licensee issued a letter to all of its customers using the specified models of the device, directing such users to remove the devices from applications related to the packaging of food, beverages, pharmaceuticals, or cosmetics and to return them to 3M. The licensee's action was confirmed to the Commission by letter dated February 5, 1988. We have determined to confirm 3M's action by this Order.

IV

Accordingly, in view of the foregoing and pursuant to sections 81, 161b, 161c, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30, 31, and 32, *It is hereby Ordered, effective immediately, that license numbers 22–*

00057-06 and 22-00057-32G are modified as follows:

In accordance with its letter dated February 5, 1988, the licensee shall inform all users of its Model 902, 902F, 906, and 908 static eliminators involved in the packaging of food, beverages, pharmaceuticals, and cosmetics that it is withdrawing these devices from service and that such devices are to be returned to the licensee as instructed in the licenesee's notice to customers dated February 5, 1988.

The Director, Office of Nuclear Materials Safety and Safeguards, may relax or rescind any of the above conditions for good cause shown by the licensee.

V

Any person other than the licensee adversely affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing shall be submitted to the Director of the Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with copies to the Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137. If such person requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the petitioner's interest is adversely affected by this Order. A request for a hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested by a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such a hearing is whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Materials Safety and Safeguards.

Dated at Rockville, Maryland this 5th day of February, 1988.

Order Modifying Licenses, Effective Immediately

I

Minnesota Mining and Manufacturing Company (3M or Licensee) is the holder of several byproduct material licenses issued by the Nuclear Regulatory Commission (the Commission or NRC). License No. 22-00057-06 was issued on February 17, 1964, was most recently amended on May 6, 1987, and expires on May 31, 1992. This license authorizes the Licensee to use a variety of radionuclides, including polonium-210 (Po-210), and to conduct a variety of activities with these materials including manufacturing, testing, installing, and repairing radioactive sources, and the devices in which they are used.

License No. 22-00057-32G was issued on July 12, 1965, was most recently amended on May 5, 1987, and expires on July 31, 1990. The license authorizes the Licensee to transfer Po-210 sources for use in static elimination devices to persons generally licensed in accordance with the provisions of 10 CFR 31.5 The authorized devices include, among others, Model Numbers 902, 902F, and 905-909, inclusive (the 900 series).

On January 25, 1988, these licenses were modified by an immediately effective Order. These licenses were further modified by an immediately effective Confirmatory Order on February 5, 1988.

II

As more fully described in the Order Modifying License, Effective Immediately, dated January 25, 1988, the NRC had determined that the use of the above-described static elimination devices has resulted in significant alpha contamination on worker clothing and in a number of facilities. As of January 25, 1988, the root cause of these contamination incidents had not been identified. These causes could be related to manufacturing defects, the environment and conditions of use, and/or other unknown factors. The devices initially of concern appeared to be Model Nos. 902, 902F, 906, and 908 which use compressed air. The total number of these static elimination devices being used by general licensees was not then known to NRC. The facts then known demonstrated an immediate potential for radiological hazards to personnel working with the static eliminators and others present in the area of use. Accordingly, the Commission found that the public health, safety, or interest required that the January 25, 1988 Order be made effective immediately. The Order modified 3M's licenses and, among other things, suspended the authority to distribute Model Nos. 902, 902F, 906, and 908 polonium-210 static elimination devices.

As more fully described in the Confirmatory Order Modifying License, Effective Immediately, dated February 5, 1988, NRC subsequently learned of multiple instances of failures of Model Nos. 902, 902F, 906, and 908 devices. Many of these failures occurred at facilities where general licensees manufacture products, or packages for products, such as food, beverages, pharmaceuticals, cosmetics, medical products, and other items which are to be consumed by, or applied to, humans.

On February 5, 1988, the Licensee issued a letter to all of its customers using the specified models of the device, directing such users to remove the devices from applications related to the packaging of food, beverages, pharmaceuticals, or cosmetics and to return them to 3M. The Licensee's action was confirmed by Order dated February 5, 1988. The February 5, 1988 Confirmatory Order modified 3M's license to require 3M to inform all users of its Model 902, 902F, 906, and 908 static eliminators involved in the packaging of food, beverages, pharmaceuticals, and cosmetics that it is withdrawing these devices from service and that such devices are to be returned to the Licensee.

III

Subsequent to issuing the February 5, 1988 Confirmatory Order, the staff has received reports of additional failed devices. Some of the newly reported failures are identified by model numbers not specified in the prior Orders. For example, Model No. 907 static elimination devices, which utilize blown rather than compressed air, have been found leaking in at least 3 cases. In addition, bar-type static eliminator devices, specifically Model No. 210, have been reported to have leaked. Some of these blown air and bar-type devices are used in plants that manufacture products and packages, or package materials for products, which would constitute a direct pathway for human exposure if contaminated. At this time, the cause(s) of the failures of these devices is not known.

On February 8, 1988, 3M submitted a brief report of its work under the Order of January 25. The staff met with 3M at Region III offices on February 11, 1988, to discuss these results and to hear 3M's proposed plan of action. Among other things, 3M senior executives indicated that 3M planned to voluntarily withdraw all static eliminators (regardless of model number) used in the packaging of food, beverages, pharmaceuticals, and cosmetics.

In view of the wide use of these devices, the increasing number of failed devices of various model numbers, the current uncertainty as to the failure mechanisms and the potential for contamination and the consequent exposure of humans, the Commission finds that the public health, safety, and interest requires that all such devices, regardless of model number, be withdrawn from use by general

licensees engaged in the production and/or packaging of food, beverages, pharmaceuticals and cosmetics and that such action be ordered, effective immediately.

IV

Accordingly, in view of the foregoing and pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30 and 32, it is hereby ordered, effective immediately, that license numbers 22–00057–06 and 22–00057–32G are modified as follows:

A. 3M is required to inform all users of all models of 3M Po–210 static eliminators involved in the production or packaging of food, beverages, pharmaceuticals, or cosmetics that it is withdrawing these devices from service and that such devices are to be returned to 3M not later than March 2, 1988, in accordance with its instructions.

B. Not later than March 4, 1988, 3M shall submit to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, a written report describing the extent to which it has complied with this Order and the February 5, 1988 Order. The report shall include the names, addresses, and telephone numbers of all users who were not notified and all users who have failed to return devices by this date.

The Deputy Director, Office of Nuclear Material Safety and Safeguards, may relax or rescind any of the above conditions for good cause shown by the licensee.

IV

The Licensee and any other person adversely affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing shall be submitted to the Deputy Director of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, with copies to the Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the Licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the petitioner's interest is adversely affected by this Order. A request for a hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing is whether this Order should be sustained.

For The Nuclear Regulatory Commission.

Robert M. Bernero,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Dated at Rockville, Maryland, this 12th day of February, 1988.

[FR Doc. 88–4016 Filed 2–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 030–04951 030–04971; License Nos. 22–00057–06 22–00057–32G]

Order Modifying Licenses Effective Immediately and Order To Show Cause; Minnesota Mining and Manufacturing Co.

In the Matter of Minnesota Mining and Manufacturing Company, 3M Center (220–2E–02) St. Paul, MN 55144–1000.

I

Minnesota Mining and Manufacturing Company (3M or Licensee) is the holder of byproduct material licenses issued by the Nuclear Regulatory Commission (the Commission or NRC). License No. 22–00057–06 was issued on February 17, 1964, was most recently amended on May 6, 1987, and expires on May 31, 1992. This license authorizes the Licensee to use a variety of radionuclides, including polonium-210 (Po-210), and to conduct a variety of activities with these materials including manufacturing, testing, installing, and repairing radioactive sources, and the devices in which they are used.

License No. 22–00057–32G was issued on July 12, 1965, most recently amended on May 5, 1987, and expires on July 31, 1990. This license authorizes the Licensee to transfer Po-210 sources for use in static elimination devices to persons generally licensed in accordance with the provisions of 10 CFR 31.5. These licenses were modified by an immediately effective Order on January 25, 1988, an immediately effective Confirmatory Order on February 5, 1988, and a third immediately effective Order on February 12, 1988.

II

As more fully described in the Order Modifying License, Effective Immediately, dated January 25, 1988, the NRC had determined that the use of the above-described static elimination devices had resulted in significant alpha contamination on worker clothing and in a number of facilities. As of January 25, 1988, the root causes of these contamination incidents had not been identified. These causes could be related to manufacturing defects, the environment and conditions of use, and/or other unknown factors. The devices initially of concern appeared to be Model Nos. 902, 902F, 906, and 908 that use compressed air. The total number of these static elimination devices being used by general licensees was not known to NRC. The facts then known demonstrated an immediate potential for radiological hazards to persons working with the static eliminators of those models and other persons present in the area of use. Accordingly, the Commission found that the public health, safety, or interest required that the January 25, 1988 Order be made effective immediately. The Order modified 3M's licenses and, among other things, suspended authority to distribute Model Nos. 902, 902F, 906, and 908 polonium-210 static elimination devices.

As more fully described in the Confirmatory Order Modifying License, Effective Immediately, dated February 5, 1988, NRC subsequently learned of multiple instances of failure of Model Nos. 902, 902F, 906, and 908 devices. Many of these failures occurred at facilities where general licensees manufacture products, or packages for products, such as food, beverages, pharmaceuticals, cosmetics, medical products, and other items which are to be consumed by, or applied to, humans

On February 5, 1988, the Licensee issued a letter to all of its customers using the above-specified models of the device, directing such users to remove the devices from applications related to the packaging of food, beverages, pharmaceuticals, or cosmetics and to return them to 3M. The Licensee's action was confirmed by Order dated February 5, 1988. The February 5, 1988 Confirmatory Order modified 3M's license to require 3M to inform all users of its Model Nos. 902, 902F, 906, and 908 static eliminators involved in the packaging of food, beverages, pharmaceuticals, and cosmetics that it was withdrawing these devices from service and that such devices should be returned to the Licensee.

As more fully described in the Order Modifying License, Effective Immediately, dated February 12, 1988, NRC subsequently learned of failures of devices identified by model numbers not specified in the prior Orders. These failures included both blown air and bar-type static eliminators that are used in plants that manufacture products and packages, or package materials for products, which would constitute a direct pathway for human exposure if contaminated. The cause of these failures was not then known.

On February 8, 1988, 3M submitted a brief report of its work under the Order

of January 25. The staff met with 3M at Region III offices on February 11, 1988 to discuss these results and to hear 3M's proposed plan of action.

Among other things, 3M senior executives indicated that 3M planned to voluntarily withdraw all static eliminators (regardless of model number) used in the processing of food, beverages, pharmaceuticals, and cosmetics.

In view of the wide use of these devices for products intended for human consumption or application, the increasing number of failed devices of various model numbers, the uncertainty as to the failure mechanisms, and the potential for contamination and consequent exposure to humans, the Commission found that the public health, safety or interest required that the February 12, 1988 Order be made effective immediately. The Order modified 3M's licenses to require that 3M inform all users of all models of 3M's Po–210 static eliminators involved in the production or packaging of food, beverages, pharmaceuticals or cosmetics that 3M has withdrawn them from service and they are to be returned to 3M by March 2, 1988. The Order further required 3M to submit a report to the Regional Administrator, Region III, not later than March 4, 1988, describing the extent to which it has complied with the February 5 and February 12 Orders.

III

During its inspection of 3M, the NRC staff reviewed 3M's records of leak tests and observations of static elimination devices that have been returned from general licensees. 3M's records indicate that many devices showed measurable contamination and/or evidence of exposure to environments which may be unsuitable for the devices (e.g., solvents, moisture), but which are often typical of the workplace and the processes in which they are used. Based upon a review of 3M's records and follow-up by NRC or Agreement State staff at these customers' sites, it appears that 3M has failed to notify most, if not all, general licensees, whose returned devices were found to be leaking and/or exposed to an unsuitable environment. Furthermore, 3M has failed to perform effective follow-up of these reports and observations. During their inspections of these general licensees, NRC and Agreement State staff have found, in many instances, that static eliminators now in use at customers' sites (where 3M had knowledge of earlier leaking devices) were also leaking and causing contamination of the work place.

Based on information reviewed to date, static eliminators have experienced frequent failures in what appear to be normal and customary industrial environments (i.e., under ordinary conditions of use). Such failures are in direct conflict with the licensing basis for these devices including the requirements of 10 CFR 32.51(a)(2)(i) which states, in part, that "[u]nder ordinary conditions of handling, storage and use of the device, the byproduct material contained in the device will not be released * * *." In neither the February 8, 1988, report submitted by 3M nor the February 11, 1988 meeting with NRC did 3M submit a meaningful plan of action required by Section III, Paragraph D. of the January 25 Order, which required such a plan in 14 days of the date of the Order (i.e., by February 8). At the February 11 meeting, 3M indicated that it would need an additional two weeks to prepare such a plan of action.

Based on the information presented above (i.e., reports of failures of devices not affected by the January 25, 1988 Order; 3M's failure to notify customers; 3M's failure to take effective corrective actions after determining that a returned device was leaking and/or exposed to an unsuitable environment; 3M's failure to adequately respond to Section III, Paragraph D., of the January 25, 1988 Order; the frequency of failures in ordinary conditions of use), the NRC no longer has confidence that any of the Po–210 static elimination devices authorized for distribution to general licensees by License No. 22–00057–32G currently meet the original licensing basis including the requirements of 10 CFR 32.51.

The data available thus far includes analyses in the field by NRC, State and 3M staff showing the release of radioactive material from these generally licensed devices. The data available also include the results of many analyses by the Food and Drug Administration (FDA), State agencies and producers of products involving the use of static eliminators for food, beverage, cosmetic and pharmaceutical use as well as in many other industrial and commercial applications of the devices. The preponderance of these data indicates that, although the Po–210 appears to remain tightly bound in nondigestable and nonrespirable microspheres in accordance with the design basis, the particles are released from the devices in ordinary conditions of use. Such releases are not in accordance with the licensing basis nor in accordance with the requirements of 10 CFR 32.51. Given the broad use of these devices, the evolving number of failed devices being reported, the lack of effective actions by the Licensee in this matter, the pervasive potential for exposure of personnel working with these devices as well as other persons in the area of use, and the potential for contamination of products manufactured with the assistance of 3M static eliminators of all types and widely distributed to members of the public, the NRC finds that the public health, safety, and interest require that the actions specified in Section IV of this Order be made effective immediately.

The NRC has been informed that some of these Po–210 static eliminators are used in industrial or commercial service where suppression of static electricity is needed for workplace safety such as where significant fire or explosion hazards might otherwise exist. Therefore, in exercising the necessary radiological safety precaution of removing these devices from use, the NRC recognizes the need to consider the possibility of at least temporarily approving continued use where competing safety risks are involved and process surveillance is sufficient.

IV

Accordingly, in view of the foregoing and pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 2.204 and 10 CFR Parts 30 and 32, *It is hereby ordered, effective immediately, that license numbers 22–00057–06 and 22–00057–32G are modified as follows:*

A. The authority to transfer any Po–210 static elimination device to persons generally licensed is suspended except as may be specifically authorized in writing by the NRC.

B. 3M shall immediately notify by First Class Mail (1) all general licensees using static elimination devices containing Po–210 and manufactured by 3M and (2) all distributors outside the United States that the NRC has issued an immediately effective Order modifying the general license provided by 10 CFR 31.5 to suspend use of such devices. The notification shall include a copy of this Order and a copy of the Order Modifying General License which is attached hereto.

C. 3M shall instruct users of the devices to return them to 3M as soon as feasible but within 90 days of the date of this Order, except as provided by the Order of February 5 and 12, 1988. 3M shall also furnish its customers with shipping instructions and packaging materials as may be necessary for the safe return of the devices to 3M.

D. Upon receiving the returned devices from its customers, 3M shall

promptly test the devices for detectable leakage. When detectable leakage is found, 3M shall notify its customers of the potential contamination of their workplace and also notify the NRC or Agreement State, as appropriate, of the leaking device.

E. 3M shall submit to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, written reports describing the extent to which it has achieved compliance with Paragraphs A, B, C, and D above, including the names, addresses, and telephone numbers of all users who were not notified as required, and the reasons therefore, and all users who failed to return the devices by the dates specified in Paragraph C. Reports shall be submitted at intervals not to exceed 30 days, with the first report due not later than March 21, 1988.

The Director, Office of Nuclear Material Safety and Safeguards, may in writing relax or rescind any of the above conditions for good cause shown by the Licensee.

V

Within 60 days of the date of this Order pursuant to 10 CFR Section 2.202(b), the Licensee shall show cause why License No. 22–00057–32G should not be revoked in its entirety and why License No. 22–00057–06 should not be revoked to the extent it authorizes manufacturing of static elimination devices containing Po–210. The Licensee shall show cause by filing a written answer under oath or affirmation setting forth the matters of fact and law on which the Licensee relies. The answer shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555.

VI

The Licensee and any person other than the Licensee adversely affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washignton, DC 20555, with copies to the Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the Licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the petitioner's interest is adversely affected by this Order. A request for a hearing shall not stay the immediate effectiveness of the actions called for by Section IV of this Order.

If a hearing is requested, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing is whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Dated at Rockville, Maryland, this 18th day of February, 1988.

[FR Doc. 88–4017 Filed 2–24–88; 8:45 am]

BILLING CODE 7590–01–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 to Act as Representative Payee
(2) *Form(s) Submitted:* AA–5, G–478
(3) *Type of Request:* Revision of a currently approved collection
(4) *Frequency of Use:* On occasion
(5) *Respondents:* Individuals or households
(6) *Annual Responses:* 5,000
(7) *Annual Reporting Hours:* 900
(8) *Collection Description:* Section 12 of the Railroad Retirement Act provides for the payment of benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The collection obtains information used by the Board for selection of a representative payee and verification of an annuitant's capability to manage benefit payments.

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, Elaina Norden (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. 88–3991 Filed 2–24–88; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1988, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1988, 29.9 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 70.1 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

Dated: February 19, 1988.

[FR Doc. 88–4060 Filed 2–24–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25369; File No. SR–NASD–88–2]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Imposing an Advertising Service Charge and Establishing an Arbitration Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1988, the

National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The self-regulatory organization has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act and corresponding Rule 19b–4(e), which renders the fee effective upon the Commission's receipt of this filing. 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 change adds section 13 to Schedule A of the NASD's By-Laws that establishes a service charge of $15.00 for each and every item of advertisement, sales literature and other such material filed with or submitted to the NASD, except for items that are filed or submitted in response to a written request from the NASD's Advertising Department issued pursuant to Article III, section 35(c)(6) of the NASD's Rules of Fair Practice.

The proposed rule change adding section 44 to the NASD's Code of Arbitration Procedure establishes a non-refundable filing fee of $500.00 imposed on all members for each arbitration Submission Agreement filed with the NASD against a non-member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change adds section 13 to Schedule A of the NASD's By-Laws, which establishes a service charge of $15.00 for each and every item of advertisement, sales literature and other such material filed with or submitted to the NASD, except for items that are filed or submitted in response to a written request from the NASD's Advertising Department issued pursuant to Article III, section 35(c)(6) of the NASD's Rules of Fair Practice. The proposed user-based fee reduces reliance upon general assessments and will assist the NASD in recouping a portion of its costs in processing and reviewing advertising, sales literature and other such material.

The proposed rule change also adds section 44 to the NASD's Code of Arbitration Procedure which establishes a non-refundable filing fee of $500.00 imposed on all members for each arbitration Submission Agreement filed with the NASD against a non-member. The proposed user-based fee reduces reliance upon assessments and assists the NASD in recouping a portion of the costs incurred by the NASD with respect to its arbitration facilities.

The proposed fees and charges are imposed without respect to the merit of the matter filed or submitted, the amount at issue, or to the dispositions. The proposed fees and charges are therefore user-based, with those persons using the NASD's services or facilities more often paying proportionately more than those persons using such services or facilities less frequently. The proposed advertising service charge is equitable in that it is to be imposed upon all persons utilizing such services. The proposed arbitration fee is equitable in that it is to be imposed on all member firms filing a Submission Agreement against a non-member.

For reasons stated above, the proposed fees and charges are consistent with and in furtherance of section 15A(b)(5) of the Act which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects reasonable dues, fees and other charges imposed by the NASD among members and issuers and other persons using any facility or system which the NASD operates or controls. The service charge and fee will be imposed on arbitration Submission Agreements, advertisements, sales literature and other material received by the NASD on and after February 22, 1988.

At any time within 60 days of the filing of a proposed rule change pursuant to section 19(b)(3)(A) of the Act, 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 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 may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–2 and should be submitted by March 17, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–4063 Filed 2–24–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-25372; File No. SR-PSE-87-32]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Adoption of its Pilot Program for the Appointment and Evaluation of Specialists as a Permanent Part of its Rules of the Board of Governors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1987 the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE originally filed its pilot program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts ("pilot program") with the Commission on May 4, 1981.[1] Although there has been several changes to the pilot over the years, it has been operating on a continual and regular basis since its original adoption. In order to adopt the structure of the pilot program as a permanent part of the PSE rules, the Board of Governors submitted to the Commission a proposed rule change SR-PSE-87-19 earlier this year.[2] As this request for permanent approval is still pending with the Commission, the PSE is submitting this filing to request that the current pilot program be extended for an additional six months to enable the PSE to operate the pilot program without interruption and to allow the Commission the necessary time to consider the initial rule filing submitted by the PSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE Program for the Appointment and Evaluation of Specialists and Creation of New Specialists Posts was originally filed with the Commission on May 4, 1981. The purpose of the pilot program has been to establish an effective procedure and criteria for (a) the appointment of new specialists, (b) the evaluation of the appointment of new specialists, and (c) the evaluation of the performance of PSE specialists. In 1982, 1985, and 1986, the pilot program was amended to provide for changes in the Specialist Evaluation System. Since its original adoption the program has been renewed on a continual and regular basis.

Prior to the end of the third quarter of 1987, the PSE submitted proposed rule change SR-PSE-87-19 for the purpose of adopting the structure of the pilot program as a permanent part of its rules.

At this time, the PSE is seeking to extend the temporary nature of the pilot program for an additional six months for the purpose of allowing the Commission the necessary time to review the proposed PSE rule change outlined in SR-PSE-87-19 and to allow the program to remain in effect while such proposal is pending.

The proposed rule change is consistent with section 6(b) of the Act in general, and section 6(b)(5) in particular, in that it helps to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to, and perfect the mechanics of, a free and open market, and protect investors and the public interest by allowing for an adequate and effective measure of specialist performance.

A. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Recieved from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The proposal seeks to extend the pilot program for an additional six months to provide the Commission with additional time to thoroughly analyze all aspects of the PSE's pilot program and determine whether the pilot program should be approved on a permanent basis.

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 communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the PSE. All submissions should refer to the file number in the caption above and should be submitted by March 17, 1988.

V. Conclusion

The Commission finds that the proposed rule change that would extend the pilot temporarily is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. In this regard, we note that the extension of the pilot furthers the protection of investors and the public interest by allowing for the continued evaluation of specialist performance while the Commission considers permanent approval.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in that the Commission believes it is appropriate to permit the program to remain in effect for an additional six months while the Commission considers the Exchange's

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[1] See Securities Exchange Act Release Nos. 17647 (March 20, 1981) 46 FR 19372 and 17818 (May 27, 1981) 46 FR 30016. The PSE filed an amendment to the original filing on May 4, 1981.

[2] *See*, Securities Exchange Act Rel. No. 24800 (August 14, 1987), 52 FR 32372. The Exchange filed Amendment No. 1 to the filing requesting the Commission to extend the effectiveness of the pilot program for three months, while the Commission considered for approval the Exchange's proposal to adopt, on a permanent basis, its rules governing the Appointment and Evaluation of Specialists and the Creation of Specialist Posts. The Commission granted accelerated approval of Amendment No. 1, thereby extending the pilot for three months as requested. However, the remaining portion of the filing is currently pending before the Commission.

proposal to approve the pilot program on a permanent basis. The Commission believes, therefore, that accelerated effectiveness of the extension of the pilot program is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

Dated: February 18, 1988.

[FR Doc. 88-4064 Filed 2-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25360; File No. Phlx 87-37]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amendment of Rules Regarding the Regulation of Member and Member Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1987 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. pursuant to Rule 19b-4, hereby proposes the following rule change: Rules 600 through 697, as presently in effect are to be deleted except for Rules 631, 652, 691, and 692 which will be redesignated as Rules 605–608 respectively, and amended as indicated below (deletions bracketed; additions underscored). The text of new rules 600 through 604 are presented below.

Regulation of Members and Member Organizations—Addresses of Members

Rule 600. Every member or member organization shall register with the Secretary of the Exchange an address where notices may be served. Subsequent changes in address must be provided to the Office of the Secretary of the Exchange before the effective date thereof.

Offices, Other Than Main Offices

Rule 601. No office of a member or member organization for which the Exchange is 'the Designated Examining Authority' shall be established without the prior notification of the Office of the Secretary of the Exchange. Each such office must be in charge of a partner, a voting stockholder or a manager and shall be subject to such rules as the Exchange may prescribe.

Certificate of Membership

Rule 602. The Office of the Secretary of the Exchange shall provide members and member organizations a Certificate of Membership. Additional Certificates of Membership shall be provided on request to member organizations maintaining branch offices. Such certificates shall be at all times the property of the Exchange, and every certificate shall be returned to the Exchange on the transfer of membershp by the member therein designated, on the dissolution or insolvency of the member organization, the permanent closing of the office in which it is displayed, or on the demand of the Exchange.

Control of Offices

Rule 603. Each office of a member or member organization shall be under the control of the member or member organization and shall not be occupied jointly with any non-member; provided, however, that upon application, the Exchange may waive this requirement if the exchange is satisfied that under the circumstances the public is not likely to be misled. To the extent the offices of a member or member organization are used for activities other than the conduct of a securities business, customers must be informed that those other activities are not subject to regulation or oversight by the Exchange or the Securities and Exchange Commission.

Termination of Employment

Rule 604. Members and member organizations shall immediately file a Form U-4 Uniform Termination Notice for Securities Industry Representatives and/or agents to the Central Registration Depository (CRD) upon termination of any associated person.

Advertising and Market Letters

Rule [652] *605. No change.*
... Commentary No change.
... Supplementary Material.

The *Exchange* [Committee on Member Firms] has adopted the following policy regarding advertising, market letters, research reports and sales literature:

... No change.
Supplementary Information Regarding Rule [652] 605
... No change.
Rule [631] *606* No change.
Rule [691] *607* No change.
Rule [692] *608* No change.
... Supplementary Material
Supplementary Information Regarding Rules [691–692] *607–608*
.01 –.10 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reflect current Exchange policy and procedures respecting maintenance of the membership lists, association with member organizations, establishment and control of membership offices, and policy standards respecting advertisements, market letters, research reports and sales literature. Additionally this rule change reflects deletion of all references and rules in connection with the imposition of fixed commission rates which were repealed in 1976.

Specifically, proposed Rule 601 provides that no member firm may open a branch office without prior Exchange approval. The proposal would amend the existing provision to apply only to firms for which the Exchange is the Designated Examining Authority. For the most part, this only includes firms that conduct business on the floor of the Exchange. The proposal would delete the existing requirement that every office of every member by open during Phlx trading hours. Because of the extension of the trading day in connection with the vening currency options program, this requirement is not realistic or appropriate.

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[3] 17 CFR 200.30-3.

The proposal's deletion of Rule 605–607 and 671–697 result because all were virtually designed to buttress the fixed commission system.

The proposed rule change is consistent with section 6(b)(5) of the Act and particularly in that section it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and promote the public interest.

B. Self-Regulatory Organizaitons Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office fo the Phlx. All submissions should refer to the file number in the caption above and should be submitted within March 17, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 18, 1988.

[FR Doc. 88–4065 Filed 2–24–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25362; File No. SR–PHLX 87–40]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Specialists' Responsibilities Regarding Stop Orders

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 November 9, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") pursuant to Rule 19b–4, hereby proposed to amend Rule 203.01 to permit, under certain circumstances and upon approval of Floor Officials: (1) Specialists to cease accepting stop orders in a particular stock during a trading session, and (2) specialists to cancel and return all outstanding stop orders on his book for a particular stock if such action is taken within one hour prior to the opening of trading in such stock.

Agreement of Specialists

Rule 203. No Change

. . . Supplementary Material

.01 A stop order is a contingency order to buy or sell when the market for a particular security reaches a specified price. A stop order to buy becomes a market order when the security trades at or above the stop price. A stop order to sell becomes a market order when the security trades at or below the stop price. Under exceptional circumstances and upon the approval of two (2) Floor Officials, a specialist may cease accepting further stop orders in a particular stock during a trading session. Under exceptional circumstances and upon the approval of two (2) Floor Officials, a specialist may also cancel and return all outstanding stop orders on his book for a particular stock if he takes such action within one hour prior to the opening of trading in such stock.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, equity specialists will now have the ability under exceptional circumstances to refuse acceptance of stop orders. These orders have increasingly become an administrative burden for specialists to hold and execute. These burdens are magnified particularly in extremely heavy trading days such as those occurring during the last couple of weeks or when announcements with regard to a particular security cause its trading volume to soar.

Under the proposed rule change, the specialist may determine that he cannot carry out his duties as a specialist if he is overwhelmed with stop orders for a particular security. Under exceptional circumstances and with the approval of two Floor Officials after the opening, a specialist may cease accepting stop orders in a given security for that day. In that instance, he is still obligated to execute all stop orders already entrusted to him. If the specialist makes this determination at least one hour prior to the opening of the security, he may refuse to accept additional stop orders and may also return all stop orders already on his book.

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, 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 PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR-PHLX-87-40 and should be submitted by March 17, 1988

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

Dated: February 18, 1988.

[FR Doc. 88-4066 Filed 2-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25373; File No. SR-PHLX-87-28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 24, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that would allow Phlx member organizations to establish their own exercise cut-off times for expiring foreign currency options positions.

The proposed rule change was noticed in Securities Exchange Act Release No. 25016, 52 FR 38985 (October 20, 1987). No comments were received on the proposed rule change.

The Phlx states that the purpose of the proposed rule change is to allow the Phlx to extend the exercise cut-off time for Phlx traded foreign currency options. Currently, pursuant to Phlx Rule 1042, Phlx member organizations must submit exercise instructions for expiring options positions, including foreign currency options positions, no later than 5-30 p.m. New York time on the business day immediately prior to the expiration date. The proposed rule change would extend this deadline for foreign currency options contracts by providing that Rule 1042 shall not apply to them.

The proposed rule change provides that member organizations shall set their own exercise cut-off times for foreign currency options. The cut-off times established by member organizations, however, must be consistent with the rules of the Options Clearing Corporation ("OCC"). In this regard, member organizations must continue to establish exercise cut-off times that allow clearing firms to comply with the rules of OCC, particularly OCC expiration date exercise procedures.

The Phlx contends that the statutory basis for the proposed rule change is section 6(b)(5) of the Act, in that it will facilitate transactions in foreign currency options by enabling member organizations to set more optimal exercise cut-off times. The interbank currency markets operate on a 24-hour basis. Thus, the foreign currencies underlying Phlx foreign currency options contracts continue to trade after the general exercise cut-off time established pursuant to Phlx Rule 1042. The extension of the exercise cut-off time for expiring foreign currency options will afford persons who wish to exercise foreign currency options as much time as possible to do so, as long as such cut-off times are consistent with OCC Rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[3] and the rules and regulations thereunder. More specifically, the Commission agrees that the proposed rule change will allow member organizations to set more optimal exercise cut-off times in light of the 24-hour operation of the interbank currency markets. As a result, and as long as consistent with OCC rules, holders of foreign currency options will have the opportunity to exercise their options on the basis of price movements in the underlying currency, which occur after the 5:30 p.m. exercise cut-off time provided by Phlx Rule 1042.

The rule change also does not modify greatly the risk to writers of foreign currency options contracts. Currently, foreign currency option holders can exercise up to three hours after the close of trading on the last trading day prior to expiration.[4] The rule change only would extend the period of exercise after the cessation of trading. Moreover, this period is limited by the exercise restrictions contained in OCC's Rules.[5] Finally, the risk of assignment due to exercise after trading is explained in the Options Disclosure Document ("ODD").[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] 15 U.S.C. 78f (1982).

[4] Foreign currency options cease trading on the Phlx at 2:30 p.m. on the last trading day prior to expiration.

[5] *See* OCC Rule 805.

[6] The ODD at page 66 states that "foreign currency options may be exercised on the basis of price movements in the underlying currency after the close of trading in the options markets, when writers are no longer able to close out their short positions."

[7] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: February 19, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-4067 Filed 2-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No IC-16279; (812-6845)]

Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc. et al.; Application

Date: February 19, 1988.

ACTION: Notice application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., Prudential-Bache California Municipal Fund, Prudential-Bache Equity Fund, Inc., Prudential-Bache Equity Income Fund, Prudential-Bache FlexiFund, Prudential-Bache Global Fund, Inc., Prudential-Bache Global Genesis Fund, Inc., Prudential-Bache Global Natural Resources Fund, Inc., Prudential-Bache GNMA Fund, Inc., Prudential-Bache Government Plus Fund, Inc., Prudential-Bache Government Plus Fund, II, Prudential-Bache Government Securities Trust, Prudential-Bache Growth Opportunity Fund, Inc., Prudential-Bache High Yield Fund, Inc., Prudential-Bache IncomeVertible Plus Fund, Inc., Prudential-Bache MoneyMart Assets Inc., Prudential-Bache Municipal Bond Fund, Prudential-Bache Municipal Series Fund, Inc., Prudential-Bache Municipals Fund, Inc., Prudential-Bache Option Growth Fund, Inc., Prudential-Bache Tax-Free Money Fund, Inc., Prudential-Bache Utility Fund, Inc., The Global Government Plus Fund, The Global Yield Fund, Inc., The High Yield Income Fund, Inc. (collectively, "Funds") and The Prudential Insurance Company of America ("Prudential").

Relevant 1940 Act Sections: Order sought under section 17(d) and Rule 17d-1.

Summary of Application: Applicants seek an order permitting the Funds, as well as certain future investment companies for which Prudential or direct or indirect subsidiaries of Prudential serve as investment adviser, to deposit their uninvested cash balances into a single joint account, the daily balance of which would be used to enter one or more overnight (or weekend or holiday) repurchase agreements in a total amount equal to the aggregate daily balance in the joint account.

Filing Dates: The application was filed on August 24, 1987, and amended on December 29, 1987, and February 10, 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 March 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033, or Brion Thompson, Special Counsel (202) 272-3016 (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 commerical copier (800) 231-3282 [in Maryland (301) 258-4300].

Applicants' Representations

1. The Funds comprise most of the investment company complex known as the Prudential-Bache Mutual Funds. Each Fund now extant (other than the registered closed-end investment companies) has a currently effective registration statement under the 1940 Act. The Funds wish to deposit their univested cash balances at the end of each trading day into a single joint account, the daily balance of which would be used to invest in one or more large repurchase agreements in a total amount equal to the aggregate daily balance in the account. Presently, such invested cash balances of certain of the Funds are separately invested daily in individual purchases of U.S. government securities or repurchase agreements with a bank or major brokerage house secured by U.S. government securities or similar short-term investment contracts, in order to earn additional income for each Fund. (Those Funds which do not presently invest in repurchase agreements or do not yet have an effective 1940 Act registration join in the application in anticipation that they may wish to do so in the future; other registered investment companies advised by Prudential but which have different custodian banks than the Funds are not included in this application.)

2. Each morning the repurchase desk operated by Prudential on behalf of the Funds begins negotiating the interest rate for repurchase agreements for that day and lining up the United States government obligations required as collateral. Most of the morning purchases of repurchase agreements are completed by 9:30 a.m. and the trading desk is able to place final East Coast orders between 1:30 p.m. and 2:30 p.m., with an occasional agreement as late as 3:00 p.m. in unusual circumstances. A Fund may enter into West Coast repurchase agreements (which are available up to 4:00 p.m. New York time) on an "as needed" basis, although there can remain some amount of its assets which is received too late, or is too small to be effectively invested in a separate transaction or at a rate reflecting the cost and investment risk of the transaction.

3. In connection with the use of repurchase transactions collateralized by U.S. government securities, Applicants represent that each of the Funds has established the same systems and standards, including quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be at least 102% collateralized at all times. These uniform systems and standards will apply to all transactions contemplated by Applicants' proposed joint account.

4. Each repurchase agreement would be made by calling a United States bank, a non-bank primary government securities dealer or a major brokerage house and indicating the rate of interest and size of the desired repurchase agreement. Particular U.S. Government obligations to be held as collateral would then be identified and the Funds' custodian bank (presently State Street Bank and Trust Company of Boston, Massachusetts) would be notified. The securities would either be wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Fund at another qualified bank or redesignated and segregated on the records of the custodian bank if the custodian bank is already the recorded holder of the collateral for the repurchase agreement. This procedure

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[8] 17 CFR 200.30-3(a)(12) (1986).

would occur on almost every trading day for each of the Funds that wish to enter into joint repurchase agreements. Applicants note that presently each Fund must separately pursue, secure, and implement such investments. This has resulted in certain inefficiencies, and may limit the return which some or all Funds achieve.

5. The Funds pay approximately $24 per transaction to their custodian bank for processing each repurchase agreement. This fee is a processing fee only and is not related to the size of the transaction. During the twelve months ended December 31, 1986, these fees amounted to approximately $120,000 for the Funds. Applicants represent that if the proposed joint account had been in place and the daily balances in the account were invested in a single repurchase agreement each business day, the estimated total transaction cost would have amounted to $30,000, an aggregate savings for the Funds of approximately $90,000.

6. According to the application, it is difficult to predict: (i) The average size of the joint account, since the daily needs of each Fund will fluctuate (during the twelve months ended December 31, 1986, the average total daily amount invested by all of the Funds in T-bills or repurchase agreements approximated $325,000,000); (ii) the average percent of the joint account which any single Fund's participation would represent, since fluctuations in both size of the joint account and each particular Fund's assets which might be deposited in the joint account, since the monies remaining uninvested on any given day can fluctuate widely as the result of, for example, sales of portfolio securities required by unexpectedly large redemptions, failure of a sizable purchase transaction to settle at the anticipated time or scarcity of appropriate portfolio securities for investment on any given day.

7. Applicants represent that the proposed joint account would operate as follows:

(a) A separate custodian cash account would be established into which each Fund would cause its uninvested net cash balances to be deposited daily.

(b) Cash in the joint account would be invested in repurchase agreements. (with a duration not to exceed one business day) collateralized by suitable U.S. government obligations (*i.e.*, obligations issued or guaranteed as to principal and interest by the government of the U.S. or by any of its agencies or instrumentalities, and satisfying the uniform standards set by the Funds for such investment).

(c) All investments held by the joint account would be valued on an amortized cost basis.

(d) Each Fund subject to an exemptive order permitting valuation on the basis of amortized cost, or relying upon Rule 2a–7 under the 1940 Act for that purpose, would use the average maturity of the joint account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

(e) In order to assure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund would be allowed to create a negative balance in the joint account for any reason, although it would be permitted to draw down its entire balance at any time.

(f) Each Fund would participate in the income earned or accrued in the joint account, including all instruments held by the joint account, on the basis of the percentage of the total amount in the account on any day represented by its share of the account or of such particular instruments.

(g) Prudential would administer the investment of the cash balance in and operation of the joint account as part of its duties under its existing or any future investment advisory contract with each Fund and would not collect any additional fee for the management of the joint account. (Prudential will collect its fees based upon the assets of each separate Fund as provided in each respective investment advisory agreement).

(h) The Funds would enter into an agreement with each other to govern the proposed joint account in accordance with the foregoing principles, the form of which agreement is attached to the application as Exhibit B.

(i) The administration of the joint account would be within the fidelity bond coverage required by section 17(g) of the 1940 Act and Rule 17g–1 thereunder.

Applicants' Legal Analysis

1. Applicants submit that each Fund, by participating in the proposed joint account, and Prudential, by managing the proposed joint account, could be deemed to be "a joint participant" in a transaction within the meaning of section 17(d) of the 1940 Act, and that the proposed account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of Rule 17d–1 under the 1940 Act. Although Prudential does not believe that it would be participating as a principal in a "joint enterprise or other joint arrangement" in effecting the proposed transactions on behalf of the Fund, its investment advisory fees do include compensation for managing each Fund's assets, including the assets contributed by each Fund to the joint account. Accordingly, Applicants seek an order under section 17(d) of the 1940 Act and Rule 17d–1 thereunder before implementing the proposed joint account.

2. Applicants state that the proposed joint account would not be distinguishable from any other account maintained by a Fund with its custodian bank except that monies from the Funds could be deposited into the account on a commingled basis and that the account would not have any separate existence which would have indicia of a separate legal entity. Each Fund would automatically transfer its uninvested cash remaining after the conculsion of its daily trading activity into the account. The sole function of this account would be to provide a convenient way of aggregating what otherwise would be the one or more individual daily transactions for each Fund necessary to manage the daily uninvested cash balances of each Fund. Accordingly, Applicants assert that each Fund would participate in the joint account on the same basis as every other Fund in conformity with it fundamental investment objective and restrictions, that Prudential would have no monetary participation in the joint account, and that the Funds' assets will continue to be held under proper bank custodial procedures. In addition, Applicants believe that the proposed joint trading account will not only permit the Funds to save substantial yearly transaction fees, but will also allow the Funds to negotiate higher rates of return; reduce errors by reducing the number of trade tickets; and allow the Funds greater flexibility to cover excess cash near the end of each trading day.

3. Applicants' respective the Board of Directors or Trustees, as the case may be ("Governing Bodies"), have considered the relative benefits to each Fund and to Prudential to be derived from the proposed arrangement and have determined that it would be beneficial to each Fund, that there is no basis on which to predicate greater benefit to any one Fund than to another, and that the benefits to Prudential of reduced administrative costs and duties are incidental compared to the potential

benefits to each Fund. Applicants represent that any future Funds which utilize the joint account will be required to participate in the account on the same terms as the existing Funds as set forth in the application. Moreover, the Governing Bodies have determined that the operation of the joint account will be free of any inherent bias favoring one Fund over another; the qualitative benefits to the Funds of the joint account outweigh any quantitative disparities in the allocation of economic benefits among such Funds; and the anticipated benefits flowing to each Fund will fall within an acceptable range of fairness. Further, the Governing Bodies determined that participation in such joint account by one or more future Funds would not alter their conclusions with respect to participation by the existing Funds and that it would be desirable to permit such future participation without the necessity of applying for an amended order.

4. Applicants conclude that, for the reasons set forth in the application as summarized above, the granting of the requested order would be consistant with the provisions, policies and purposes of the 1940 Act and that participation in the proposed joint account by each Fund would not be on a basis different from or less advantageous than that of any other Fund participants and that the participation by Prudential would be ministerial only, so that the criteria for issuance of an order under section 17(d) of the 1940 Act and Rule 17d–1 thereunder are met.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–4068 Filed 2–24–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1168]

Fine Arts Committee; Open Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 19, 1988 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 11:30 a.m. and is open to the public.

The Agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meetng in September 1987, the announcement of gifts, loans and financial contributions during calendar year 1987, and a report on the publication of two books on the Diplomatic Reception Rooms collection.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 12, 1988.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 88–4004 Filed 2–24–88; 8:45 am]

BILLING CODE 4710–38–M

[Public Notice CM–8/1169]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea (SOLAS); Notice of Meeting Change

The SOLAS Subcommittee of the Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 am on March 30, 1988, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Please note that this meeting was originally scheduled for 31 March but has been rescheduled for 30 March 1988.

The purpose of the meeting is to finalize preparations for the 55th Session of the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) which is scheduled for 11–22 April in London. In particular, the SOLAS Subcommittee will discuss the development of U.S. positions dealing with, inter alia, the following topics:

—Authorization of surveys to classification societies.
—Investigation into serious casualties.
—Reports of the various Subcommittees.
—Preparation for 1988 Conference to modify the SOLAS and Load Line Conventions.

Members of the public may attend up to the seating capacity of the room.

Interested persons may seek information by writing: Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G–CPI), 2100 Second Street SW., Washington, DC 20593, or by calling: 202–267–2280.

Dated: February 4, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–4005 Filed 2–24–88; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–88–010]

Fort Madison Railroad and Highway Bridge across the Upper Mississippi River, Mile 383.9, at Fort Madison, IA; Public Hearing

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Coast Guard announces a forthcoming public hearing for the presentation of views concerning the alteration of the Fort Madison Railroad and Highway Bridge.

DATE: The meeting will be held at 7:00 p.m., Wednesday, March 30, 1988.

ADDRESS: The meeting will be held in the City of Fort Madison Municipal Building Council Chambers, 811 Avenue 'E', Fort Madison, Iowa.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, (314) 425–4607.

SUPPLEMENTARY INFORMATION: Complaints have been received alleging that the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates that there were 79 marine collisons with the bridge since 1972. These collisions have caused minimal to heavy damage to the bridge. Based on this information, the bridge appears to be a hazard to navigation. This may require increasing the horizontal clearance to the bridge to meet the needs of navigation. All interested parties shall have full opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed, and if so, what alterations are needed giving due consideration to the necessities of free and unobstructed water navigation. The necessities of land traffic will also be considered.

Any person who wishes may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri 63103–2398, telephone (314) 425–4607, any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or

in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Second Coast Guard District at the above address. Transcripts of the hearing will be made available for purchase upon request.

(33 U.S.C. 513; 33 CFR 116.20)

Dated: February 19, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 88-4045 Filed 2-24-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Walker and Catoosa Counties, GA

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 proposal to relocate existing U.S. 27 on new location generally outside the Chickamauga-Chattanooga National Military Park.

FOR FURTHER INFORMATION CONTACT: Thomas D. Myers, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road NW., Atlanta, Georgia 30367, telephone (404) 347-4751, or Frank L. Danchetz, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (GDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to relocate existing U.S. 27 [project number MLP-813(1)]. The preferred alternative would be on the west side of the Chickamauga-Chattanooga National Military Park in Walker-Catoosa Counties. The proposal would being on U.S. 27 just north of the intersection with County Road (CR) 144 and would extend northwest on new location for approximately 5.1 miles. The alignment would extend through part of the westernmost boundary of the Chickamauga and Chattanooga National Military Park. The proposed project would terminate with an interchange at S.R. 2 near the intersection of C.R. 289. The proposed project would contain at-grade intersections, grade crossings and a short relocation of Long Hollow Road. The proposed project's typical section would be four twelve foot travel lanes, two in each direction separated by a median. Approximately 200 feet of right-of-way would be required for the proposed project. The proposed work is necessary to separate the high volumes of U.S. 27 through traffic and the visitor traffic utilizing existing U.S. 27 within the Park. Additional alternatives including the no-build will be examined.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned. A public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action on the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.250, *Highway Research, Planning and Construction.* Georgia's approved clearinghouse review procedures apply to this program.

Tom Myers,

District Engineer, Federal Highway Administration, Atlanta, Georgia.

[FR Doc. 88-4061 Filed 2-24-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 6-88]

Treasury Notes of May 15, 1993, Series K-1993

Washington, February 18, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of May 15, 1993, Series K-1993 (CUSIP No. 912827 VY 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 3, 1988, and will accrue interest from that date, payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m. Eastern Standard time, Thursday, February 25, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later

than Wednesday, February 24, 1988, and received no later than Thursday, March 3, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncometitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, whenever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, March 3, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, March 1, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, March 3, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is

pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary

[FR Doc. 88-4132 Filed 2-23-88; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 5-88]

Treasury Notes of February 28, 1990, Series X-1990

Washington, February 18, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of February 28, 1990, Series X-1990 (CUSIP No. 912827 VX 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 29, 1988, and will accrue interest from that date, payable on a semiannual basis on August 31, 1988, and each subsequent 6 months on February 28 and August 31 through the date that the principal becomes payable. They will mature February 28, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 24, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 23, 1988, and received no later than Monday, February 29, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own acount will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, February 29, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 25, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, February 29, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-4133 Filed 2-23-88; 2:14 pm]

BILLING CODE 4810-40-M

Performance Review Board; Departmental Offices

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership of the Departmental Offices Performance Review Board (PRB) and supercedes the list published in 51 FR 30023, August 21, 1986, in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB is to review senior executive employees' performance and make recommendations regarding performance ratings, performance awards and other personnel actions.

The names and titles of the PRB members are as follows:

Jill E. Kent, Acting Assistant Secretary of the Treasury for Management (Chair)
John H. Auten, Director, Office of Financial Analysis
Paul W. Bateman, Deputy Treasurer of the United States
Dallas S. Batten, Deputy Assistant Secretary (Policy Coordination)
Ralph L. Bayer, Director, Office of Synthetic Fuels Project
Thomas J. Berger, Deputy Assistant Secretary for International Monetary Affairs
William J. Bremner, Deputy Assistant Secretary (Federal Finance)
O. Donaldson Chapoton, Deputy Assistant Secretary (Tax Policy)
Roger M. Cooper, Deputy Assistant Secretary for Information Systems
Robert A. Cornell, Deputy Assistant Secretary for Trade and Investment Policy
Michael R. Darby, Assistant Secretary (Economic Policy)
Stephen J. Entin, Deputy Assistant Secretary (Economic Forecasting)
Robert C. Fauver, Director, Office of Industrial Nations and Global Analysis
Jon M. Gaaserud, Director, US Saudi Arabian Joint Commission Program Office
Matthew P. Hennesey, Director, Office of Development Policy
Michael R. Hill, Inspector General
Francis A. Keating, Assistant Secretary of the Treasury for Enforcement
John K. Meagher, Assistant Secretary (Legislative Affairs)
Samuel T. Mok, Comptroller
David C. Mulford, Assistant Secretary of the Treasury for International Affairs
Gerald Murphy, Fiscal Assistant Secretary
Thomas P. O'Malley, Director, Office of Procurement
Katherine D. Ortega, Treasurer of the United States
Charles B. Repass, Director, Office of Building Operations and Management
Charles Schotta, Deputy Assistant Secretary for Arabian Peninsula Affairs
Charles O. Sethness, Assistant Secretary of the Treasury for Domestic Finance
C. Eugene Steurle, Deputy Assistant Secretary (Tax Analysis)
Margaret Tutwiler, Assistant Secretary of the Treasury for Public Affairs and Public Liaison
Edwin A. Verburg, Director, Office of Finance
D. Edward Wilson, Deputy General Counsel
Gregory P. Wilson, Deputy Assistant Secretary (Financial Institutions Policy)
Robert P. Zoellick, Executive Secretary and Special Advisor.

DATE: Memberships on the Performance Review Board are effective as of February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Larry G. Hicks, Executive Secretary,

PRB, Room 1314, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone: (202) 566–5468. This notice does not meet the Department's criteria for significant regulations.

Jill E. Kent,

Acting Assistant Secretary of the Treasury for Management.

[FR Doc. 88–3968 Filed 2–24–88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Delegation Order No. 96 (Rev. 10)]

Delegation of Authority; Associate Chief Counsel (Technical and International) et al.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The expiration of authority to limit the retroactive effect of the revocation of any determination letter or opinion letter issued with respect to employee plans is extended for Directors of EP/EO Key Districts from December 31, 1987 to December 31, 1989. The complete text of the delegation order appears below.

EFFECTIVE DATE: February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Kotzenmacher, 1111 Constitution Ave. NW., Room 2239, Washington, DC 20224, Telephone No. (202) 566–6222 (not a toll free telephone number).

Richard A. Westley,

Chief, Employee Plans and Exempt Organizations Determination Branch.

[Order No. 96 (Rev. 10)]

Effective date: 2–23–88

Application of Rulings Without Retroactive Effect

1. Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7805–1(b):

a. the Associate Chief Counsel (Technical and International) and the Deputy Associate Chief Counsel (Technical) are hereby authorized to prescribe the extent, if any, to which any ruling issued by or pursuant to authorization from the Chief Counsel relating to the internal revenue laws shall be applied without retroactive effect.

b. the Assistant Commissioner (Employee Plans and Exempt Organizations) and the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) are hereby authorized to prescribe the extent, if any, to which any ruling issued by or pursuant to authorization from the Assistant Commissioner relating to the internal revenue laws shall be applied without retroactive effect.

2. a. Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7805–1(b), there is hereby delegated to the Director, Employee Plans Technical and Actuarial Division of the National Office, and to the Director of each EP/EO Key District, the authority to limit the retroactive effect of the revocation of any determination letter or opinion letter issued with respect to employee plans if the conditions set forth in Notice 86–3 are met:

b. Partial relief will be granted through section 7805(b) such as described in Notice 86–3.

3. The section 7805(b) authority described in sections 2a and 2b will be exercised except in rare and unusual circumstances. Where rare and unsual circumstances exist, denial of section 7805(b) relief will be applied only if approved by the National Office.

4. The authority delegated in section 1 may not be redelegated.

5. The authority to grant 7805(b) relief in certain employee plan matters herein delegated to the Director, Employee Plans Technical and Actuarial Division and to the Director of each EP/EO Key District may not be redelegated below the level of Chief, Employee Plans Rulings Branch, Chief, Employee Plans Qualifications Branch and Chief, EP/EO Division, respectively.

6. This delegation order expires with respect to the Director of each EP/EO Key District on December 31, 1989.

7. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

8. Delegation Order No. 96 (Rev. 9) (Correction) effective April 17, 1986, is superseded.

Aproved.

Dated: February 11, 1988.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 88–4036 Filed 2–24–88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 37
Thursday, February 25, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 4, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–4093 Filed 2–23–88; 10:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., March 4, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–4094 Filed 2–23–88; 10:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 18, 1988.

PLACE: 2033 K. Street, NW., Washington DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–4095 Filed 2–23–88; 10:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 18, 1988.

PLACE: 2033 K Street, NW., Washington DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–4096 Filed 2–23–88; 10:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 25, 1988.

PLACE: 2033 K. Street, NW., Washington DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–4097 Filed 2–23–88; 10:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 25, 1988.

PLACE: 2033 K. Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–4098 Filed 2–23–88; 10:21 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 2, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Lawn Darts: Options

The Commission will consider options to reduce risks to children from lawn darts.

Closed to the Public

2. Compliance Status Report

The staff will brief the Commission on a Compliance Status Report.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

February 22, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88–4120 Filed 2–23–88; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, March 4, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #3530

The Commission will consider Enforcement Matter OS #3530.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

February 22, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88–4121 Filed 2–23–88; 12:46 pm]

BILLING CODE 6355–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 1, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Friday, March 4, 11:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1988—Rand Hoch.
Draft Advisory Opinion 1988—John R. McKay on behalf of the American Pilots' Association.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

POSTAL SERVICE

Board of Governors

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 3:00 p.m. on Monday, March 7, 1988, in Washington, DC, and at 8:30 a.m. on Tuesday, March 8, 1988, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the March 7 meeting is closed to the public. The March 8 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At its meeting on February 1, 1988, the Board voted to close to public observation its meeting scheduled for March 7, 1988, to consider the Postal Rate Commission's Opinion and Recommended Decision in Docket No. R87–1. (See 53 FR 3661, February 8, 1988.)

Agenda

Monday Session

March 7, 1988—3:00 p.m. (Closed)

1. Consideration of Postal Rate Commission's Opinion and Recommended Decision in Docket No. R87–1.

Tuesday Session

March 8, 1988—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 1–2, 1988.
2. Remarks of the Postmaster General.
3. Briefing on North Suburban, Illinois, Facility.
4. Resolution on Advanced Site Acquisition Procedure.
5. Report on Annual Testimony on Legislative Committees.
6. Report on Law Department Programs.
7. Report on Marketing and Communications Group Programs.
8. Tentative Agenda for April 4–5, 1988, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 88–4087 Filed 2–23–88; 9:53 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 29, 1988:

A closed meeting will be held on Tuesday, March 1, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 1, 1988, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive action.
Formal order of investigation.
Regulatory matter bearing enforcement implication.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

Jonathan G. Katz,

Secretary.

February 22, 1988.

[FR Doc. 88–4062 Filed 2–22–88; 4:15 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 37
Thursday, February 25, 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.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

Oversight of the Radio and TV Rules

Correction

In rule document 88-1718 beginning on page 2497 in the issue of Thursday, January 28, 1988, make the following corrections:

§ 73.3615 [Corrected]

On page 2499, in the second column, in § 73.3615(d), in the third line, "or" should "on".

§ 76.611 [Corrected]

On the same page, in the third column, in § 76.611(a)(1), in the fourth line, "0" should read "θ".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-305]

Wisconsin Public Service Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

Correction

In notice document 88-3162 beginning on page 4479 in the issue of Tuesday, February 16, 1988, make the following correction:

On page 4480, in the second column, in the eighth line, "new" should read "now".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Amendments to VEAP Required by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

Correction

In proposed rule document 88-3080 beginning on page 4186 in the issue of Friday, February 12, 1988, make the following correction:

§ 21.5021 [Corrected]

On page 4187, in the third column, in § 21.5021(j)(4), in the fourth line, "late" should read "last".

BILLING CODE 1505-01-D

Federal Register

Thursday
February 25, 1988

Part II

Department of Treasury

Internal Revenue Service

26 CFR Part 1

Income Taxes; Limitations on Passive Activity Losses and Credits; Temporary Regulations and Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8175]

Income Tax; Taxable Years Beginning After December 31, 1953; Limitations on Passive Activity Losses and Credits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the limitations on passive activity losses and passive activity credits. Changes to the applicable tax law were made by the Tax Reform Act of 1986. The temporary regulations affect taxpayers subject to the limitations on passive activity losses and passive activity credits and provide them with the guidance needed to comply with the law. 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 on this subject in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: Except as otherwise provided in § 1.469–11T, the temporary regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Grace 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) 566–3288 [not a toll-free call].

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide temporary rules relating to the limitations on passive activity losses and passive activity credits (the "passive loss and credit limitations"). The temporary regulations reflect the amendment of the Internal Revenue Code of 1986 (the "Code") by sections 501 and 502 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2233 and 2241), which added section 469. Section 469 disallows the passive activity loss and the passive activity credit for the taxable year.

Scope of the Regulations

These regulations provide general rules for applying the the passive loss and credit limitations.

Section 1.469–1T contains rules relating to the disallowance of the passive activity loss and passive activity credit, the taxpayers to whom the passive loss and credit limitations apply, the general effect of section 469 on the treatment of items of income, gain, loss, deduction, and credit from passive activities, definitions of essential terms (including "passive activity," "trade or business activity," and "rental activity"), the treatment of certain losses from oil and gas working interests, the application of the passive loss and credit limitations to C corporations (including rules relating to the application of the material participation standard, the computation of net active income, and the application of section 469 to affiliated groups of corporations filing consolidated returns), and the treatment of spouses filing joint returns.

Section 1.469–2T contains rules for computing the passive activity loss, including rules for identifying passive activity gross income, passive activity deductions, and portfolio income and related deductions, and rules (including rules pursuant to section 469 (1), (2), and (3)) requiring that income from certain passive activities be treated as income that is not from a passive activity.

Section 1.469–3T contains rules for computing the passive activity credit, including rules relating to the identification of credits subject to section 469 and the computation of the regular tax liability allocable to passive activities.

Section 1.469–5T contains rules defining the term "material participation" for purposes of section 469 and the regulations thereunder.

Section 1.469–11T explains the effective date of section 469 and the regulations thereunder and provides guidance under the transitional rule for losses and credits from preenactment interests in passive activities.

Future regulations will provide rules identifying economic undertakings that are treated as separate activities for purposes of section 469 and the regulations thereunder (to be located in § 1.469–4T), rules relating to the treatment of losses allowable under section 469(g) upon certain dispositions of interests in activities (to be located in § 1.469–6T), rules relating to the treatment of certain "self-charged" expenses and related income (to be located in § 1.469–7T), rules relating to the application of section 469 to trusts, estates, and their beneficiaries (to be located in § 1.469–8T), rules relating to the application of the $25,000 allowance under section 469 (i) for passive activity losses and credits attributable to certain rental real estate activities (to be located in § 1.469–9T), rules relating to the treatment of publicly traded partnerships under section 469(k) (to be located in § 1.469–10T), and rules relating to the application of the passive loss and credit limitations in the case of former passive activities and corporations that change status from year to year, i.e., corporations that cease to be "personal service corporations," corporations that cease to be "closely held corporations," and C corporations that become S corporations (to be located in § 1.469–1T (k)).

Significant Policy Issues

I. Effect of Section 469 on Other Provisions

A. Items of Income or Gain

Section § 1.469–1T(d)(1) provides that the characterization of items of income or deduction as passive activity gross income or passive activity deductions does not affect the treatment of any item of income or gain under any provision of the Code other than section 469. Thus, for example, an item of capital gain from a passive activity that is treated under the regulations as an item of passive activity gross income is taken into account in determining both the passive activity loss and credit for the taxable year and the allowable capital loss for the taxable year.

B. Items of Deduction

Section 1.469–1T(d)(3) provides that, except as otherwise provided by regulations, a deduction that is disallowed for a taxable year under section 469 is not taken into account as a deduction that is allowed for the taxable year in computing the amount subject to any tax imposed by subtitle A of the Code. Thus, for example, if a deduction is disallowed under section 469 for purposes of computing taxable income subject to income tax, the deduction is not taken into account in computing the taxpayer's net earnings from self-employment for purposes of the tax on self-employment income imposed under chapter 2 of the Code.

II. Definition of Passive Activity

A. Trade or Business Activity

Under section 469(c)(1), an activity which involves the conduct of a trade or business and in which the taxpayer does not materially participate is a passive activity. Section 1.469–1T(e)(2) generally defines the term "trade or business activity" to mean an activity that involves the conduct of a trade or business within the meaning of section 162.

Under section 469(c)(6), the term "trade or business" may include, to the extent provided in regulations, any

activity in connection with a trade or business, and any activity with respect to which expenses are allowable as a deduction with respect to which expenses are allowable as a deduction under section 212. Although the Service is studying the possibility of treating certain activities in connection with a trade or business and certain section 212 activities as trade or business activities for purposes of section 469, these regulations do not so treat any such activities.

B. Rental Activity

Section 469(j)(8) provides that the term "rental activity" means any activity where payments are principally for the use of tangible property. Section 1.469–1T(e)(3)(i) provides that an activity generally is a rental activity for a taxable year if the gross income attributable to the conduct of the activity for the year represents amounts paid or to be paid principally for the use of tangible property. In addition, an activity may be a rental activity if tangible property in the activity is held for rent and the expected gross income from the activity will represent payments principally for the use of such property.

Section 1.469–1T(e)(3)(ii) provides six exceptions to the general rule. The first exception provides that an activity involving the use of tangible property is not a rental activity if, on the average, the period for which each customer uses the property is seven days or less. This exception will exclude from treatment as a "rental activity" most activities involving short-term use of tangible personal property such as automobiles, videocassettes, tuxedos, and tools, and short-term use of hotel and motel rooms. The rationale for the "seven-day rule" is that a customer's use of property for seven days or less generally will require the person furnishing the property to provide services significant enough to justify the conclusion that the person is engaged in a service business rather than a rental activity.

The second exception provides that an activity involving the use of tangible property is not a rental activity if (a) on the average, the period for which each customer uses the property is greater than seven days but not greater than 30 days and (b) significant personal services are provided. Thus, for example, a taxpayer operating a hotel will not be treated as engaged in a rental activity, even if guests stay for an average period that exceeds seven days, if significant personal services are provided.

Section 1.469–1T(e)(3)(iv) provides that only services performed by individuals are treated as personal services. Thus, services such as telephone and cable television service are not taken into account. Section 1.469–1T(e)(3)(iv)(B) also provides that certain specified services, referred to as "excluded services" are not taken into account. The excluded services are (a) all services necessary to permit the lawful use of the property, (b) services in connection with the construction of improvements or in connection with the performance of repairs that extend the useful life of the property, and (c) in the case of improved real property, the kinds of services commonly provided in connection with long-term rentals of high-grade commercial and residential property (e.g., janitorial services).

The third exception provides that an activity involving the use of tangible property is not a rental activity if extraordinary personal services are provided by or on behalf of the owner in connection with making property available for use by customers. This exception applies even if, on the average, the period for which each customer uses the property exceeds 30 days. Extraordinary personal services are provided only if the services are performed by individuals, and the customers' use of the property is incidental to their receipt of the services provided. For example, the use by patients of a hospital's boarding facilities generally is incidental to their receipt of the personal services provided by the hospital's medical and nursing staff. In some cases, it may be difficult to determine whether the use of property is incidental to the services provided. The Service invites comment on the extraordinary services rule.

The fourth exception is for rentals incidental to certain nonrental activities of the taxpayer. This exception applies if (a) an insubstantial amount of rental income is derived from renting property incidental to an activity of holding such property for investment, (b) the rented property is lodging provided to the taxpayer's employees for the convenience of the taxpayer, (c) an insubstantial amount of rental income is derived from property that was recently used in a trade or business activity of the taxpayer and is temporarily rented, (d) the property is held for sale to customers in the ordinary course of a trade or business and is in fact sold during the taxable year.

The fifth exception provides that an activity of making property available for use by customers is not a rental activity if the taxpayer customarily makes the property available during defined business hours for nonexclusive use by various customers. Thus, operating a facility (such as a golf course) that is used by customers who would normally be characterized as invitees or licensees rather than lessees or tenants is not a rental activity.

The sixth exception relates to property provided for use in a nonrental activity of a partnership, S corporation, or joint venture in which the taxpayer owns an interest. The provision of such property is not a rental activity if the taxpayer does not rent the property to the partnership, S corporation or joint venture, but provides the property in the taxpayer's capacity as an owner of such an interest.

III. Special Rules Treating Certain Activities as Nonpassive

A. Exception for Certain Oil and Gas Working Interests

1. *Property unit to which exception applies.* Section 469(c)(3)(A) provides that the term "passive activity" does not include any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the taxpayer's liability with respect to such interest. Section 1.469–1T(e)(4)((i) applies this rule on a well-by-well basis. Thus, if a taxpayer owns a working interest in a tract of land, assigns the working interest in part of the tract to a partnership in exchange for a limited partnership interest, and drills a well on the retained portion of the tract, the working interest exception will apply to that well. If, however, the partnership drills a well on the assigned portion of the tract, the working interest exception will not apply to the taxpayer's interest in that well.

2. *Entities that limit liability.* Section 1.469–1T(e)(4)(v) provides that an entity limits the liability of a holder of an interest in the entity only if, under the applicable State law, the holder's potential liability for all obligations of the entity is limited (as in the case of a limited partner or a stockholder) to a determinable fixed amount. Thus, the working interest exception may apply even if the taxpayer is protected against loss by an indemnification agreement, a stop loss arrangement, insurance, any similar arrangement, or any combination of such devices.

In addition, a partnership in which a taxpayer is a general partner is treated as an entity that does not limit the taxpayer's liability, and any working interest that the taxpayer holds through such a partnership is treated as an interest in an activity that is not a passive activity. Thus, deductions from the working interest (including deductions allocable to a limited

partnership interest of the taxpayer) will not be subject to the passive loss limitation.

Taxpayers should draw no inferences from these rules concerning the application of section 465(b)(4). If deductions and losses from a working interest are subject to limitation under section 465, then the provisions of section 465(b)(4) apply without regard to the treatment of such deductions and losses under section 469. As explained below, the regulations include rules coordinating the limitations under sections 465 and 469.

3. *Effect of limited liability at the time economic performance occurs.* Under § 1.469–1T(e)(4)(i), the working interest exception applies for a taxable year to an interest in an oil or gas well drilled or operated pursuant to a working interest that the taxpayer holds at any time during such year either directly or through an entity that does not limit the liability of the taxpayer with respect to such well. Section 1.469–1T(e)(4)(ii) provides that notwithstanding the working interest exception a portion of the taxpayer's deductions from an oil or gas well will be treated as passive activity deductions (and a corresponding portion of any gross income from the well will be treated as passive activity gross income) if the taxpayer has a net loss from the well, and economic performance occurs with respect to expenses deducted for the taxable year in connection with the drilling or operation of the well at a time when the taxpayer holds the interest in the well through an entity that limits the taxpayer's liability with respect to such drilling or operation. For this purpose, the term "economic performance" has the same meaning as in section 461(h), without regard to the exceptions for recurring items or the spudding of oil and gas wells.

Under this rule, the working interest exception may apply for a taxable year to a well drilled by a partnership in which the taxpayer owns a general partnership interest that is convertible at the taxpayer's option into a limited partnership interest. If, however, the interest is converted before economic performance has occurred with respect to all items of deduction taken into account by the taxpayer for the taxable year in connection with the drilling or operation of the well, the working interest exception will not apply for the taxable year to that portion of the taxpayer's net loss for the year that is attributable to deductions for expenses with respect to which economic performance occurred after the conversion.

4. *Income recharacterization rule.* If any loss for a taxable year from an interest in an oil or gas property is treated under the working interest exception as a loss that is not from a passive activity, then any net income from the property for any subsequent taxable year is treated as income that is not from a passive activity. This rule is explained more fully below under the heading "Income from oil or gas properties with respect to which the taxpayer benefited from the working interest exception."

B. Trading Personal Property

In some circumstances, the activity of trading personal property (such as securities or commodities or other property of a type that is actively traded) for one's own account has been treated as a trade or business. Even in those circumstances, however, the income or loss from the activity resembles portfolio income or loss in that it results entirely from the holding and sale of personal property. Accordingly, § 1.469–1T(e)(6) provides that an activity of trading personal property of a type that is actively traded for the account of owners of interests in the activity is not a passive activity even if the activity is treated as a trade or business.

IV. Identification of Items of Deduction and Credit That Are Disallowed Under Section 469

Section 1.469–1T(f) provides rules identifying the items of deduction and credit that are disallowed when any part of the taxpayer's passive activity loss or passive activity credit is disallowed for the taxable year. In the case of losses, the regulations generally provide that the amount of the disallowed loss is first allocated ratably among all of the taxpayer's passive activities that have net losses for the year. Any loss allocated to an activity is then generally allocated ratably among all passive activity deductions from the activity for the year. In the case of credits, the first step is omitted; the disallowed passive activity credit is allocated ratably among all of the taxpayer's credits from passive activities.

Taxpayers generally need not account separately for each item of deduction or credit disallowed under section 469. The regulations provide that separate accounting is required if and only if separate identification of an item of deduction or credit may affect the taxpayer's tax liability for any taxable year. For example, if 40 percent of the loss from a passive activity is disallowed for the taxable year, and one of the deductions from the activity is a loss from the sale of a capital asset, the taxpayer must separately identify 40 percent of that deduction as a deduction that is disallowed for the taxable year. Separate identification of the capital loss is required because the limitation on capital losses under section 1211 applies after section 469 and, thus, the disallowance of a capital loss (rather than an ordinary deduction) may affect the taxpayer's tax liability for one or more taxable years.

V. Application of Section 469 to C Corporations

A. Definition of "Personal Service Corporation"

For purposes of section 469, § 1.469–1T(g)(2)(i) defines the term "personal service corporation" by cross reference to the definition of such a corporation in § 1.441–4T(d). Those regulations generally provide that a corporation is not a personal service corporation unless it is a C corporation and its principal activity is the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

B. Effect of Net Active Income of a Closely Held Corporation

Section 469(e)(2)(A) provides that the passive activity loss of a closely held corporation shall be allowable as a deduction against the net active income of such a corporation, and that a similar rule shall apply in the case of any passive activity credit of such a taxpayer. Section 1.469–1T(g)(4) provides that a closely held corporation's passive activity loss for the taxable year is decreased by the corporation's net active income for the year.

Section 1.469–1T(g)(5) provides that a closely held corporation's passive activity credit for the taxable year is decreased by the corporation's net active income tax liability for the year. For purposes of this rule, a closely-held corporation's net active income tax liability is the regular tax liability that is allocable to the corporation's net active income, reduced by all credits other than credits from passive activities.

Since net active income is computed by modifying taxable income, net operating loss carrybacks and carryforwards to the taxable year must be taken into account. Therefore, a net operating loss carryback which requires a closely held corporation to recompute its net active income and net active income tax liability for one or more years may also require a recomputation

of the corporation's passive activity loss and passive activity credit for one or more years.

C. Treatment of Affiliated Groups of Corporations Filing Consolidated Returns

Section 1.469–1T(h) contains special rules for applying section 469 and the regulations thereunder to an affiliated group of corporations filing a consolidated return for the taxable year (a "consolidated group"). Under these rules, a consolidated group generally is treated as a single corporation for purposes of section 469 and the regulations thereunder. Thus, a single passive activity loss and passive activity credit are computed for such a group. In addition, the status of each member of an affiliated group as a personal service corporation or closely held corporation is the same as the status of the entire consolidated group, determined as though the group were a single corporation. In making this determination, and in applying the participation tests set forth in § 1.469–1T(g)(3), only stockholders of the group's common parent are treated as stockholders of the hypothetical single corporation.

Section 1.469–1T(h)(5) contains rules for allocating a consolidated group's disallowed passive activity loss and credit among the group's members. Under these rules, the disallowed loss or credit is first allocated among the members of the group and is then allocated among the activities of the members under the general rules in § 1.469–1T(f).

Section 1.469–1T(h)(6) contains rules relating to intercompany transactions (within the meaning of § 1.1502–13(a)(1)). These rules generally are intended to attribute all items of income and deduction of all members that are attributable to an intercompany transaction to the activities of the purchasing member (within the meaning of § 1.1502–13(a)).

The Service invites comment on all aspects of the rules in § 1.469–1T(h).

D. Coordination With Other Provisions

The Service recognizes that further rules are needed to coordinate section 469 with certain other provisions applicable to corporations (e.g., sections 381, 382, and 1502) and invites comment on these rules.

VI. Treatment of Spouses Filing a Joint Return

Section 469(h)(5) provides that in determining whether a taxpayer materially participates in an activity, the participation of the taxpayer's spouse shall be taken into account. Section 469(i)(6)(D) provides a parallel rule for active participation. Section 469(1)(5) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out provisions of section 469, including regulations relating to changes in marital status and changes between joint returns and separate returns.

The Service believes that treating married persons filing a joint return as separate taxpayers for purposes of section 469 would present undesirable administrative difficulties, and that it is generally preferable to treat such persons as one taxpayer. In some situations, however, this treatment would frustrate the purposes of the passive loss and credit limitations. For example, the fact that one spouse holds a working interest in an oil or gas well through an entity that does not limit the spouse's liability should not be taken into account in determining whether the working interest exception applies to any portion of the working interest that is held by the other spouse. In addition, if two individuals cease filing a joint return, it is necessary for each individual to account for the deductions and credits treated under section 469(b) as allocable to his or her passive activities.

Accordingly, § 1.469–1T(j) provides that spouses filing a joint return for a taxable year generally are treated for such year as one taxpayer for purposes of section 469 and the regulations thereunder. For purposes of the working interest exception, however, married persons are treated as separate taxpayers. In addition, if any deductions or credits are disallowed under section 469, the disallowed deductions and credits attributable to each spouse's activities must be separately identified.

The Service invites comment on the treatment of married persons.

VII. Definition of Passive Activity Loss

Section 469(d)(1) defines the term "passive activity loss" as the amount (if any) by which the aggregate losses from all passive activities for the taxable year exceed the aggregate income from all passive activities for such year. In the interest of clarity, § 1.469–2T(b) defines the passive activity loss for the taxable year as the amount, if any, by which the passive activity deductions for the taxable year exceed the passive activity gross income for the taxable year. The rules in § 1.469–2T (c) and (d) identify the items treated as passive activity gross income and passive activity deductions, respectively, for the taxable year.

VIII. Identification of Items of Gross Income and Deductions From Passive Activities

The regulations state that, except as otherwise provided, all items of gross income from a passive activity are included in passive activity gross income, and all deductions arising in connection with a passive activity are passive activity deductions. The regulations do not require that any particular method be employed in determining (a) whether items of income are derived from an activity, (b) whether deductions arise in connection with an activity, or (c) how shared costs should be allocated among activities. The regulations contemplate the use of reasonable methods in making these determinations, and the Service will disregard unreasonable determinations. The Service invites public comment regarding the desirability of detailed rules relating to these issues.

IX. Treatment of Gain From the Disposition of an Interest in an Activity or Property Used in an Activity

A. General Rule: Characterization of Gain at the Time of the Disposition

Gain from a disposition of property used in an activity or of an interest in an activity held through a partnership or S corporation generally is treated as gross income from that activity. Except in the case of gain from a disposition of substantially appreciated property formerly used in a nonpassive activity and gain attributable to such property from a disposition of an interest in a partnership or S corporation, such gain is passive activity gross income if the activity is a passive activity for the taxable year of the disposition.

For purposes of this rule, the gain recognized upon the disposition of a partnership interest or S corporation stock is treated as gain from the disposition of an interest in the activities in which the partnership or S corporation has an interest. Rules relating to the allocation of gain among the activities of a partnership or S corporation and the treatment of gain allocated to an activity that includes substantially appreciated property formerly used in a nonpassive activity are discussed under the heading "Dispostions of interests in partnerships and S corporations".

The Service recognizes that an approach that focuses on the character of the activity at the time of a disposition may in many circumstances appear arbitrary, and considered various other approaches. These approaches, including approaches taking

into account the nature of the activity or the use of the property during the taxpayer's entire holding period, were rejected because they are found to be equally arbitrary and substantially more difficult to administer.

The Service invites comment on the rules relating to the treatment of gain from dispositions of interests in activities and interests in property used in activities.

B. Disposition of Property Used in More Than One Activity in the 12 Months Preceding the Disposition

To ensure that the character of gain realized on the disposition of property reflects the use of the property for a reasonable period preceding the disposition, § 1.469–2T(c)(2)(ii) requires the taxpayer to allocate the amount realized on the disposition and the adjusted basis of the property among the activities in which the property was used during the 12-month period preceding the disposition. For purposes of this rule, the term "activity" includes, e.g., personal use and holding for investment.

The regulations provide only that the allocation of amount realized and adjusted basis must be reasonable. Examples illustrate that an allocation among activities is considered reasonable if it is based on the period for which the property is used in each such activity during the 12-month period. These examples are not intended to foreclose the use of other reasonable allocation methods.

In recognition of the recordkeeping burden that this allocation rule may impose, § 1.469–2T(c)(2)(ii) also provides a *de minimis* exception under which the amount realized and adjusted basis of property that was predominantly used in one activity during the 12-month period preceding its disposition may be allocated solely to that activity if the value of the property does not exceed the lesser of (a) $10,000 and (b) 10 percent of the value of all property used in the activity at the time of the disposition.

The Service invites comment on the feasibility of the allocation requirement generally, including comment on allocation rules that may be helpful to taxpayers.

C. Disposition of Substantially Appreciated Property Formerly Used in a Nonpassive Activity

The general rule characterizing gain by reference to the character of the activity in which property is used at the time of disposition could, if not limited, encourage taxpayers to structure dispositions in a manner that generates passive activity gross income in inappropriate situations. Accordingly, § 1.469–2T(c)(2)(iii) provides that any gain from a disposition of substantially appreciated property is treated as not from a passive activity unless the property was used in a passive activity for either (a) 20 percent of the taxpayer's holding period for the property or (b) the entire 24-month period ending on the date of the disposition. For purposes of this rule, property is substantially appreciated if its fair market value is more than 120 percent of its adjusted basis.

D. Pre-1987 Installment Sales

In Notice 87–8, 1987–3 I.R.B. 11, the Service announced that, under these regulations, gain recognized on the installment method would be treated as not from a passive activity if, but for the use of the installment method, the taxpayer would have taken the gain into account for a taxable year beginning before January 1, 1987. This rule is inconsistent with a proposed technical correction to section 469, and is not included in these regulations. Moreover, the Service will not enforce the rule announced in Notice 87–8 unless and until it is adopted in regulations under section 469.

X. Portfolio Income Excluded From Passive Activity Gross Income

A. General Rule

Section 1.469–2T(c)(3) provides that passive activity gross income does not include portfolio income, which is defined as gross income that is derived from specified sources (including interest, dividends, annuities, and royalties) and is not derived in the ordinary course of a trade or business. Section 1.469–2T(c)(3)(ii) provides that, for purposes of this rule, gross income is treated as derived in the ordinary course of a trade or business only to the extent specifically provided in the regulations. That provision also specifically identifies certain types of income as derived in the ordinary course of a trade or business and provides that the Commissioner may similarly treat additional types of income as similarly derived. The Service invites comment on and ruling requests relating to the treatment of interest, dividends, annuities, and royalties as derived in the ordinary course of a trade or business.

B. Characterization of Royalties From Licensing Intangible Property

Section 1.469–2T(c)(3)(iii)(B) provides that royalties from licensing intangible property may be treated as derived in the ordinary course of a trade or business only if the person receiving such royalties either created the property or performed substantial services or incurred substantial costs with respect to the development or marketing of the property. Although the determinations under this rule are generally based on all of the facts and circumstances, a person will be treated as deriving royalties in the ordinary course of a trade or business if either of two quantitative tests are satisfied. The Service invites public comment on the appropriateness of this rule and the need for additional guidance. In particular, the Service seeks comment on the quantitative tests.

C. Mineral Royalties

The regulations do not include special rules for determining whether mineral royalties are derived in the ordinary course of a trade or business because the Service is continuing to develop criteria for making this determination. The regulations include only one example illustrating the treatment of mineral royalties. This example, which follows from § 1.469–2T(c)(3)(ii)(D), indicates that royalty income derived from royalty interests held in a trade or business activity of trading or dealing in such interests is treated as derived in the ordinary course of a trade or business.

Under § 1.469–2T(c)(3)(ii), the only other mineral royalties treated as income derived in the ordinary course of a trade or business are those identified by the Commissioner. Therefore, unless and until these regulations are amended, taxpayers may not treat mineral royalties (other than royalties derived from a trade or business of trading or dealing in royalty interests) as derived in the ordinary course of a trade or business without obtaining a ruling.

Nonetheless, the Service believes that it may be appropriate to treat a portion of a mineral royalty payment as derived in the ordinary course of a trade or business in some cases not involving a trade or business of trading or dealing in royalty interests. Assume, for example, that royalty income is derived from an overriding royalty interest created on the transfer of a working interest by a partnership engaged in the trade or business of oil and gas development, and that the partnership is not taxed upon receipt of the royalty interest. In such a case, it may be appropriate to treat the royalty payments, by analogy to sections 483 and 1274, as deferred payments with respect to the sale of the working interest. Under this approach, the portion of each royalty payment that represents consideration paid to the

partnership for the working interest would be treated as income derived in the ordinary course of a trade or business, and only the interest element in the payments would be treated as portfolio income. The Service invites public comment on whether and how such distinctions should be made, and how depletion deductions should be allocated between portfolio and nonportfolio components of royalty payments.

XI. Personal Service Income Excluded From Passive Activity Gross Income

A. Payments to Partners for the Performance of Services

Section 469(e)(3) provides that earned income (within the meaning of section 911(d)(2)(A)) shall not be taken into account in computing the income or loss from a passive activity for any taxable year. Section 911(d)(2)(A) defines earned income in a manner that includes all payments to partners for the performance of services. Accordingly, the regulations provide, in § 1.469–2T (c)(4)(i)(A) and (e)(2), that any payments to a partner that are described in section 707 (a) or (c) and represent compensation for the performance of services are excluded from passive activity gross income.

The regulations do not, however, adopt the suggestion of some commentators to treat as personal service income the portion of a partner's distributive share of partnership income that represents the value of the partner's services performed on behalf of the partnership.

B. Income From Retirement Plans

Taxable distributions from pension, profit-sharing, and other retirement plans generally are comprised of compensation for past services and investment income. Both of these components generally are excluded from passive activity gross income. Therefore, § 1.469–2T(c)(4) provides that personal service income includes all income from such distributions

XII. Income From Section 481 Adjustments

If a change in accounting method results in an increase in taxable income under section 481 (a "positive section 481 adjustment"), the portion of the adjustment attributable to activities that were passive activities in the year of change is treated, under § 1.469–2T(c)(5), as passive activity gross income. The portion of the adjustment attributable to an activity is determined by allocating the adjustment among the activities that would have given rise to a positive section 481 adjustment if a separate section 481 adjustment were computed with respect to each activity, in proportion to such hypothetical positive adjustments.

XIII. Income From Oil or Gas Properties With Respect to Which the Taxpayer Benefited From the Working Interest Exception

Section 469(c)(3)(B) provides that, if a taxpayer has a loss for a taxable year from a working interest in an oil or gas property that is treated as not from a passive activity, any net income from such property for any succeeding taxable year shall be treated as not from a passive activity.

A. Pre-1987 Losses and Losses From Material Participation Activities

Section 1.469–2T(c)(6)(i) provides that section 469(c)(3)(B) applies only where a loss from a working interest arises in a taxable year beginning after December 31, 1986, and is treated as not from a passive activity solely by reason of the special working interest exception in section 469(c)(3)(A). Thus, the fact that a loss for a taxable year from an oil or gas well drilled or operated pursuant to a working interest was not subject to limitation under section 469 will not cause income for any succeeding year to be treated as not from a passive activity if either (a) the loss was taken into account for a taxable year beginning prior to January 1, 1987, or (b) the loss was not subject to limitation because the taxpayer materially participated in the activity in which the loss arose.

B. Definition of "Property"

Neither section 469(c)(3)(B) nor the legislative history defines the term "oil or gas property." Section 1.469–2T(c)(6)(iii) provides that, for purposes of applying section 469(c)(3)(B) with respect to a working interest, the term "oil or gas property" means any oil or gas property the value of which is directly enhanced by activities the costs of which are borne by the taxpayer as a result of drilling an oil or gas well with respect to the working interest. Thus, the definition of "property" in section 614(a) and the regulations thereunder is not relevant for this purpose.

The definition of the term "oil or gas property" for purposes of section 469(c)(3)(B) is illustrated by three examples. The first example indicates that if the drilling of a well on one tract reveals that a single reservoir underlies that tract and another tract in which the taxpayer owns an interest, the taxpayer's interests in both tracts are treated as part of the same oil or gas property. The second example indicates that if a well is drilled through two formations, both formations are treated as part of the same oil or gas property. The third example indicates that the mere fact that drilling activities generate information indicating the presence of oil or gas in a general geographical area is insufficient to establish that the value of oil or gas properties in such area is "directly" enhanced by the activities generating the information.

XIV. Passive Activity Deductions

A. General Rule

Section 1.469–2T(d)(1) provides that a deduction is a "passive activity deduction" for a taxable year if the deduction (a) arises in connection with the conduct of an activity that is a passive activity for the taxable year or (b) is carried over from the preceding taxable year under section 469(b). For purposes of this rule, a deduction is treated as arising in the taxable year in which the deduction would be allowable if taxable income for all taxable years were determined without regard to sections 469 and 1211. Thus, for example, if a partner's distributive share of a partnership deduction is disallowed under section 704(d) in 1987, but is not disallowed under section 704(d) (or any other provision other than section 469 or 1211) in 1988, the deduction is treated as arising in 1988.

This rule has two significant effects. First, a deduction is not taken into account in computing the passive activity loss and credit until the first taxable year in which the deduction is not disallowed by any applicable limitation other than those contained in sections 469 and 1211. Second, the determination of whether a deduction from an activity is a passive activity deduction does not depend on the character of the activity in taxable years in which the deduction is disallowed under limitations other than section 469. Thus, in the example in the preceding paragraph, the determination of whether the partner's deduction is a passive activity deduction in 1988 depends solely on whether the activity in which it arises is a passive activity of the partner in 1988.

Section 501(c)(2) of the Tax Reform Act of 1986 provides that section 469 shall not apply to any loss, deduction, or credit carried to a taxable year beginning before January 1, 1987. Consistent with the rule, § 1.469–2T(d)(2)(x) provides that an item of loss or deduction that would have been allowed for a taxable year beginning before January 1, 1987, but for section

465, 704(d), or 1366(d), is not treated as passive activity deduction.

B. Losses From Dispositions

Section 1.469–2T(d)(5) generally treats any loss recognized upon the disposition of property used in an activity or of an interest in an activity held through a partnership or S corporation as a deduction from such activity. Rules relating to the allocation of loss among activities of a partnership or S corporation are discussed under the heading "Dispositions of interests in partnerships and S corporations." Under section 469(g)(1), the loss from a disposition may be treated in whole or in part as a loss that is not from a passive activity. Future regulations will provide rules for determining when a loss is treated under section 469(g)(1) as not from a passive activity.

C. Coordination With Sections 465, 704 (d), and 1366(d)

Since, for purposes of section 469, a deduction is not treated as arising in a taxable year in which it is disallowed under section 465, 704(d), or 1366(d), rules are needed to determine which deductions are disallowed for the taxable year under such sections. Section 1.469–2T(d)(6) provides such rules.

Under § 1.469–2T(d)(6), if section 465, 704(d), or 1366(d) disallows all or any part of the taxpayer's loss attributable to an activity (within the meaning of section 465), or to an interest in a partnership or S corporation, as the case may be, a portion of each deduction taken into account in computing such loss is disallowed. To the extent the regulations under those provisions are not consistent with the rules in § 1.469–2T(d)(6), the Service expects that such regulations will be amended.

The regulations do not include any other rules coordinating section 469 with other limitations on losses and deductions. The Service invites comment on the the need for additional coordination rules.

XV. Special Rules for Partners and S Corporation Shareholders

A. In General

The determination of whether an item of income or deduction from a partnership or S corporation is an item of passive activity gross income or a passive activity deduction, respectively, is made by reference to the taxpayer's participation in the activity that generated the item of income or deduction. Section 1.469–2T(e)(1) provides that, in the case of items of income, gain, loss, and deduction from an activity conducted through a fiscal year partnership or S corporation, the taxpayer's participation is determined for the entity's taxable year. The Service invites comment on the application of this rule.

B. Certain Payments to Partners

Section 1.469–2T(e)(2)(i) provides that items of gross income and deduction attributable to a transaction between a partner and a partnership shall be characterized for purposes of section 469 in a manner consistent with the treatment of such transaction under section 707(a). Section 1.469–2T(e)(2)(ii) provides that a payment to a partner for the performance of services or the use of capital, if described in section 707(c) or section 736(a)(2), is generally characterized for purposes of section 469 and the regulations thereunder as a payment of compensation for services or interest, as the case may be, and not as a distributive share of partnership income. The Service expects that a conforming amendment will be made to § 1.707–1.

In addition, § 1.469–2T(e)(2)(iii) provides that any gain or loss taken into account by a retiring partner or a deceased partner's successor in interest as a result or a deceased partner's successor in interest as a result of a payment under section 736(b) is treated a passive activity gross income or a passive activity deduction only to the extent that the gain or loss would have been treated as passive activity gross income or a passive activity deduction if it had been recognized at the time that the liquidation of the retiring or deceased partner's interest commenced.

C. Dispositions of Interests in Partnerships and S Corporations

In general, for Federal income tax purposes, a disposition of an interest in a partnership or S corporation (a "passthrough entity") is treated as a disposition of such interest, rather than as a disposition of an interest in each of the entity's assets. The Service believes that the accurate measurement of passive activity gross income and deductions would be furthered by requiring such a disposition to be treated as a disposition of an interest in the passthrough entity's assets. The regulations nonetheless have not adopted this approach as the general rule because a reasonably accurate measurement of passive activity gross income and deductions generally may be accomplished by allocating the gain or loss from the disposition of an interest in a passthrough entity among the entity's activities.

Section 1.469–2T(e)(3) contains rules governing the treatment, for purposes of the passive loss and credit limitations, of a disposition of an interest in a passthrough entity by a holder of such an interest (the "holder"). A transitional rule also is provided.

The general rule, contained in § 1.469–2T(e)(3)(ii), requires a holder's gain or loss from a disposition of an interest in a passthrough entity (including gain or loss recognized under section 731(a)) to be allocated among the activities of the passthrough entity in proportion to the amounts of gain or loss, respectively, that would have been allocated to the holder by the passthrough entity with respect to each of the entity's activities if the entity had sold its interests in such activities on the applicable valuation date. Generally, the passthrough entity may select either the beginning of the taxable year of the passthrough entity in which the holder's disposition occurs or the date of such disposition as the applicable valuation date. The date of the holder's disposition of an interest in the passthrough entity must be used as the applicable valuation date, however, if since the beginning of the entity's taxable year the entity has sold a significant amount of the property used in any activity or the holder has contributed a significant amount of substantially appreciated or substantially depreciated property to the passthrough entity. For purposes of this rule, property is substantially appreciated if its fair market value exceeds 120 percent of its adjusted basis, and property is substantially depreciated if its adjusted basis exceeds 120 percent of its fair market value.

Under § 1.469–2T(e)(3)(iii), gain from a holder's disposition of an interest in a passthrough entity that is allocated to a passive activity under the general rule will nonetheless be treated as gain that is not from a passive activity if (a) gain that would be treated as gain that is not from a passive activity under § 1.469–2T(c)(2)(iii) would have been allocated to the holder if all of the property used in the activity had been sold, and (b) the amount of that gain exceeds 10 percent of the holder's gain from the disposition that is allocated to the activity under the general rule. This rule is designed to prevent taxpayers from using passthrough entities to structure dispositions of property in a manner that generates passive income in situations where such income would otherwise be treated as not from a passive activity under § 1.469–2I(c)(2)(iii).

Section 1.469–2T(c)(3)(iv) provides a transitional rule for dispositions of

interests in a passthrough entity that occur during any taxable year of the entity beginning prior to February 19, 1988. Under this transitional rule, gain or loss from a qualifying disposition of an interest in the entity may be allocated among the activities of the entity under any reasonable method that the selects. This transitional rule does not apply to any sale of an interest in a passthrough entity that occurs after February 19, 1988, if the holder contributes certain substantially appreciated property (as defined above) to the entity after that date.

The Service continues to study the issues presented by dispositions of interests in passthrough entities and invites comment on the treatment accorded these dispositions under § 1.469–2T(e)(3).

XVI. Recharacterization of Certain Passive Activity Gross Income

A. In General

Section 469 was intended to prevent taxpayers from using losses from rental activities and passive business activities to shelter any of three types of income: (a) Personal service income, (b) active business income, and (c) Portfolio investment income. Congress recognized the difficulty of writing statutory rules that would clearly distinguish income in these classes from income properly falling in the rental or passive business income category, and anticipated the need for additional rules to address transactions structured in order to maximize the amount of income treated as rental or passive business income. Consequently, Congress enacted section 469 (1), (2), and (3), granting to the Secretary the authority to prescribe regulations that eliminate certain items of gross income, or the net income from certain activities, from the computation of the passive activity loss and credit.

The Conference Report accompanying the Act states that the Secretary's regulatory authority is intended to be "exercised to protect the underlying purpose of the passive loss provision, i.e., preventing the sheltering of positive income sources through the use of tax losses derived from passive business activities." H.R. Conf. Rep. No. 99–841, 99th Cong., 2nd Sess., vol. II, at 147 (1986).

In the absence of regulations, taxpayers would be encouraged to generate passive activity gross income by (a) changing their participation in, and the ownership structure of, their active businesses, and (b) replacing their portfolio investments with investments in rental or passive business activities that share many of the investment characteristics of traditional portfolio investments. Although attempts to derive capital income from rental or passive business sources are not generally abusive, they could, if undeterred, frustrate Congress' intent that the passive loss provision prevent "the sheltering of positive income sources." Thus, § 1.469–2T(f) requires that income from certain activities be treated as income that is not from a passive activity.

Since taxpayers could not clearly foresee the particular recharacterization rules that these regulations would adopt, the provisions in § 1.469–2T(f) that recharacterize income from activities based on factors other than the taxpayer's participation in such activities do not apply to gross income taken into account for any taxable year beginning before January 1, 1988. In addition, the rule recharacterizing income from self-rented property does not apply to income that is attributable to the rental of property pursuant to a written binding contract entered into before February 19, 1988.

The rules contained in § 1.469–2T(f) apply only to gross income that, in the absence of such rules, would be treated as passive activity gross income. Thus, if an activity is not a passive activity, the rules in § 1.469–2T(f) do not apply to gross income from the activity. Moreover, except as specifically provided by regulation, the fact that an amount of gross income from an activity is recharacterized under § 1.469–2T(f) does not cause that activity to be treated as other than a passive activity for purposes of section 469 or these regulations.

B. Rules Preventing Conversion of Active Business Income Into Passive Activity Gross Income

1. Passive activities in which the taxpayer's participation is significant. The Service recognizes that, in the case of an activity that is not the full-time occupation of the taxpayer, the rules regarding material participation set forth in § 1.469–5T are stringent. As a result, a taxpayer spending relatively small amounts of time in unrelated activities could, in the absence of regulations, treat the gross income from such activities as passive activity gross income even though the taxpayer's participation and services are significant factors in generating the income from the activities.

In view of this concern, § 1.469–2T(f)(2) provides that an amount of the taxpayer's gross income from a significant participation passive activity equal to the taxpayer's net passive income from the activity is treated as not from a passive activity. For purposes of this rule, a significant participation passive activity is an activity (other than a rental activity) in which the taxpayer participates for more than 100 hours, but does not materially participate, for the taxable year.

The Service does not believe it appropriate to treat the taxpayer's net income, but not the taxpayer's net losses, from activities as nonpassive if the taxpayer's involvement in such activities is substantial. Accordingly, § 1.469–5T(a)(4) provides that a taxpayer materially participates in activities that would otherwise be significant participation passive activities for purposes of § 1.469–2T(f)(2) if the taxpayer's participation in all such activities exceeds 500 hours for the taxable year.

2. Activities involving the rental of property developed by the taxpayer. In general, an activity involving the rental of property is a passive activity. Under § 1.469–2T(c)(2), gain from the disposition of property used in a passive activity generally is treated as passive activity gross income. It is not appropriate, however, to treat a taxpayer's gain from the sale of a rental property as passive activity gross income if the taxpayer materially or significantly participated in the development of the property and the gain is predominantly attributable to the development of the property rather than to appreciation during the rental period.

Accordingly, § 1.469–2T(f)(5) provides that, in certain situations, an amount of a taxpayer's gross income from renting and selling an item of property equal to the taxpayer's net passive income from such rental and sale is treated as not from a passive activity. This rule applies if (a) any gain from the sale, exchange, or other disposition of the property is included in the taxpayer's income for the taxable year, (b) during any taxable year the taxpayer materially or significantly participated in a trade or business activity involving the performance of services for the purpose of enhancing the value of the property, and (c) a binding contract for the sale or exchange was entered into less than 24 months after the rental of the property commenced.

In general, the effect of this rule is that property developed by the taxpayer must be rented for at least 24 months prior to selling the property or contracting for its sale or the taxpayer's gain from the sale will not be treated as passive activity gross income.

3. Self-rented property. As indicated above, section 469 is intended, in part, to prevent taxpayers from sheltering active

business income with losses from rental activities and passive business activities. Income from an active business consists of both income from services and income from capital invested in the business. In the absence of regulations, a taxpayer could derive passive activity gross income from an active business in which tangible property is used by renting the property to an entity conducting the activity (or by causing an entity holding the property to rent the property to the taxpayer). It would be inconsistent with the purposes of section 469 to treat rental income as passive activity gross income in such cases, and the Conference Report accompanying the Act states that it would be appropriate for the Service to exercise its regulatory authority under section 469(1)(3) in the case of "related party leases or sub-leases, with respect to property used in a business activity, that have the effect of reducing active business income and creating passive income." H.R. Conf. Rep. No. 99–841, 99th Cong., 2nd Sess., vol. II, at 147 (1986).

Accordingly, § 1.469–2T(f)(6) provides that an amount of the taxpayer's gross income from renting an item of property equal to the taxpayer's net passive income from such rental is treated as not from a passive activity if the property is rented for use in a trade or business activity in which the taxpayer materially participates for the taxable year. The Service recognizes that it has the authority to treat part or all of the taxpayer's rental expense in such cases as a self-charged item, and that the amount of rental income that is recharacterized under § 1.469–2T(f)(6) may exceed the amount of income that it would be appropriate to recharacterize as a self-charged item. The Service invites comments on the relationship between this rule and the rules to be provided under § 1.469–7T (relating to the treatment of self-charged items of income and expense).

C. Rules Preventing Conversion of Portfolio Income Into Passive Activity Gross Income

1. Activities involving the rental of nondepreciable property. The Conference Report accompanying the Act states that it may be appropriate for the Service to treat "ground rents that produce income without significant expenses" as not from a passive activity. Consistently with this suggestion, § 1.469–2T(f)(3) provides that an amount of the taxpayer's gross income from an activity of renting nondepreciable property equal to the taxpayer's net passive income from the activity is treated as not from a passive activity. Since nondepreciable property may be rented together with incidental depreciable property (e.g., land with minor improvements), raising a factual issue as to whether an activity in which nondepreciable property is leased consists primarily of renting such property, § 1.469–2T(f)(3) provides a bright line for distinguishing activities involving the rental of nondepreciable property from other rental activities. Under the regulations, income from a rental activity is subject to this recharacterization rule if the unadjusted basis of the depreciable property rented in the activity is less than 30 percent of the unadjusted basis of all property rented in the activity. The Service invites comment regarding the appropriateness of this objective standard.

2. Equity-financed lending activities. Under § 1.469–2T(c)(3)(ii)(A), interest income from loans made in the ordinary course of a trade or business of lending money is not portfolio income. Absent a regulation expressly treating income from such an activity as nonpassive income, taxpayers could derive passive income from investments substantially similar to mutual fund investments by becoming passive investors in partnerships or S corporations that engage in a trade or business of lending equity funds contributed by the taxpayers. Permitting such income to be treated as passive income would be inconsistent with the purpose of section 469 to prevent the sheltering of portfolio income with losses from rental and passive business activities. On the other hand, income derived from borrowing money and lending the proceeds at a higher interest rate does not resemble the kind of portfolio income which Congress intended to protect from sheltering by passive losses.

Accordingly, § 1.469–2T(f)(4) treats as nonpassive income an amount of the taxpayer's gross income from an equity-financed lending activity equal to the lesser of (a) the taxpayer's equity-financed interest income from the activity or (b) the taxpayer's net passive income from the activity. This rule applies to the lending activities in which the average balance of debt incurred in the activity (determined at the entity level) does not exceed 80 percent of the average balance of interest-bearing assets held in the activity. In general, the taxpayer's equity-financed interest income from the activity is equal to the taxpayer's interest income from the activity multiplied by the activity's ratio of equity to interest-bearing assets. This rule is designed to treat as nonpassive income only that portion of the taxpayer's income from the activity that approximates the product of (a) the average interest rate of the activity's interest-bearing assets and (b) the taxpayer's equity contribution to the activity.

3. Passthrough entities licensing intangible property. Section § 1.469–2T(c)(3)(iii)(B) provides that royalty income received by a passthrough entity from the licensing of intangible property may be treated as income derived in the ordinary course of a trade or business if the entity (a) created the property or (b) performed substantial services or incurred substantial costs with respect to the development or marketing of the property. This treatment is appropriate in the case of a taxpayer who owns an interest in such an entity at the time that the entity creates such property, performs such services, or incurs such costs. If, however, a taxpayer acquires an interest in such an entity after the entity creates such property, performs such services, or incurs such costs, the taxpayer's royalty income resembles portfolio income rather than income derived in the ordinary course of a trade or business. Accordingly, § 1.469–2T(f)(7) provides that an amount of the taxpayer's gross income from such property equal to the taxpayer's net passive income from such property is generally treated as not from a passive activity. The Service invites comment on the rules employed in § 1.469–2T(f)(7) to determine when taxpayers are subject to this rule.

D. Limitation on Recharacterized Income

The rules contained in § 1.469–2T(f)(2) (relating to significant participation activities), § 1.469–2T(f)(3) (relating to the rental of nondepreciable property), and § 1.469–2T(f)(4) (relating to equity-financed lending activities) treat as nonpassive income an amount of the taxpayer's gross income from an activity equal to the taxpayer's net passive income from the activity. Under § 1.469–2T(f)(9)(i), the taxpayer's "net passive income" from an activity for a taxable year is the excess of the taxpayer's passive activity gross income from the activity for the year (determined without regard to these recharacterization rules) over the taxpayer's passive activity deductions from the activity for the year. The rules contained in § 1.469–2T(f)(5) (relating to the rental of property developed by the taxpayer), § 1.469–2T(f)(6) (relating to self-rented property), and § 1.469–2T(f)(7) (relating to passthrough entities licensing intangible property) are similar, but apply on a property-by-property basis.

Taxpayers should note that, under § 1.469–2T(d)(1)(ii), a deduction from an activity that is disallowed under section 469 for a taxable year is treated as a passive activity deduction from the activity for the succeeding taxable year and that, under § 1.469–2T(f)(7)(ii)(B) and (9)(iv), a similar rule applies when deductions reasonably allocable to an item of property are disallowed. Thus, if a taxpayer's loss from an activity or an item of property is disallowed for a taxable year, the taxpayer's net passive income from the activity or property for the succeeding year is reduced by the amount of such disallowed loss. As a result, the regulations do not treat income from an activity or an item of property as nonpassive income while, at the same time, prohibiting the deduction of previously disallowed losses from such activity or property.

Although prior-year losses from an activity or an item of property subject to the rules contained in § 1.469–2T(f) generally carry forward and reduce the amount of gross income that is treated as nonpassive income under those rules, this is not the case to the extent any such loss for the prior taxable year exceeds the disallowed loss allocated to such activity or property for such year under the rules of § 1.469–1T(f). In that event, the excess loss has in effect absorbed passive income, thereby resulting in the disallowance of passive losses from other activities. The Service is studying the interaction between the rules for allocating disallowed losses and rules, such as those contained in § 1.469–2T(f) and those to be provided with respect to former passive activities, under which a carryover loss may be allowed to the extent of income that would otherwise be treated as nonpassive income. The Service invites suggestions for the coordination of those rules.

E. Possible Recharacterization Rules to be Contained in Future Regulations

The Service recognizes that the rules in these regulations are not exhaustive and that taxpayers may structure additional investments that have economic characteristics similar to those of portfolio investments so as to derive passive activity gross income from such investments. The Service intends to monitor developments in this area closely, and anticipates prescribing additional regulations to the extent necessary to prevent portfolio-type income from being treated as passive activity gross income. In general, any such additional regulations would apply prospectively only. In appropriate circumstances, however, the regulations might apply to income, derived after the date the regulations are published, from investments made prior to such date, but in such cases the rules would be issued in proposed form (rather than as temporary regulations), with a period for public comment before the regulations become final.

During the preparation of these regulations, the Service considered an approach to recharacterizing certain passive activity gross income that is illustrative of the kinds of additional regulations the Service may prescribe in the future. Under this approach, gross income attributable to a preferred or guaranteed return from an investment (i.e., a return that through preferences or other arrangements is derived from sources other than the taxpayer's own invested capital) would be treated as portfolio income.

Some commentators have suggested that such a rule should address the following situation:

> A limited partnership is formed to acquire a rental property for $10 million. The general partner contributes $5 million to the partnership and the remaining $5 million of partnership capital is raised through a private placement of limited partnership interests to five individuals. The partnership agreement allocates 99 percent of partnership taxable income to the limited partners until the income allocated to them equals a 10 percent cumulative annual return on their invested capital, with any remaining taxable income allocated 15 percent to the limited partners and 85 percent to the general partner. Thus, the income earned on the general partner's invested capital will be applied, if necessary, to satisfy the limited partners' right to a 10 percent cumulative return.

Because of the limited partners' preferential right to income, their interests, depending on circumstances such as the nature of the partnership's investment, may have the characteristics of a portfolio investment. The Service considered an approach under which a limited partner's gross income attributable to a preferred return would in certain circumstances be treated as portfolio income. The Service continues to study this approach and invites comment on the circumstances in which a "preferred" or "guaranteed" return should be treated as portfolio income.

XVII. Passive Activity Credit

A. Credits Subject to Section 469

A credit may be limited under section 469 if it is from a passive activity and is described in section 38 (b) (1) through (5) (relating to general business credits), section 27(b) (relating to section 936 corporations), section 28 (relating to clinical testing of certain drugs), or section 29 (relating to fuel from nonconventional sources).

Section 1.469–3T(b) provides that a credit is treated as from a passive activity if (a) it arises in connection with a passive activity (i.e., an activity that is passive for the taxable year in which the credit would be allowed if section 469 and other specified limitations did not apply) or (b) in the case of a credit attributable to qualified progress expenditures (within the meaning of section 46(d)), it is reasonable to believe that the progress expenditure property (within the meaning of section 46(d)(2)) will be used in a passive activity when it is placed in service. Thus, for example, a credit attributable to qualified rehabilitation expenditures (within the meaning of section 48(g)(2)) which is allowed for the taxable year under section 46(d), is treated as a credit from a passive activity of the taxpayer if either (a) the activity in which the qualified rehabilitation expenditures are paid or incurred is a passive activity of the taxpayer for the taxable year in which such expenditures are paid or incurred, or (b) it is reasonable to believe that the rehabilitated property will be used in a passive activity of the taxpayer when it is placed in service.

B. Determination of Regular Tax Liability Allocable to Passive Activities

Under section 469(d)(2), the passive activity credit is the amount by which the sum of the taxpayer's credits that are subject to section 469 for the taxable year exceeds the taxpayer's regular tax liability allocable to all passive activities for such year. Section 469(j)(3) provides that the term "regular tax liability" has the meaning given such term by section 26(b). Section 1.469–3T(d)(1) provides that the taxpayer's regular tax liability for the taxable year that is allocable to all passive activities is the regular tax liability on the excess of the taxpayer's taxable income for the year over the amount by which the taxpayer's passive activity gross income exceeds the taxpayer's passive activity deductions for the taxable year.

C. Coordination With Other Limitations on Credits

In general, the limitation on the passive activity credit applies before all other limitations that may apply to credits from passive activities (other than the limitation in section 41(g) (relating to research credits of certain individuals)). If a credit is subject to section 469 for a taxable year but is not disallowed by section 469, the credit becomes subject to other limitations in the same manner as credits from

activities that are not passive activities. In determining the years to which a general business credit may be carried, the credit is treated for purposes of section 39 as a current year business credit in the first taxable year in which the credit is subject to section 469 but is not disallowed thereby.

XVIII. Material Participation

A. In General

Under § 1.469–5T(a), an individual is treated as materially participating in an activity for a taxable year if and only if the individual meets one of seven tests. The first four tests (contained in § 1.469–5T(a) (1) through (4)) are quantitative in nature, and are based on the number of hours spent participating in the activity during the year. The fifth and sixth tests (contained in § 1.469–5T(a) (5)) and (6)) are based on material participation by the taxpayer in prior years. The seventh test (contained in § 1.469–5T (a)(7)) is a facts-and-circumstances test.

B. Quantitative tests

Under § 1.469–5T(a)(1), an individual is treated as materially participating in an activity for a taxable year if the individual participates in the activity for more than 500 hours during the year.

The Service believes that the 500-hour test will have the effect of restricting deductions from the types of trade or business activities that Congress intended to treat as passive activities, since few investors in traditional tax shelters devote more than 500 hours during a taxable year to any such investment. In addition, the Service believes that income from an activity in which an individual participates for more than 500 hours during a taxable year is not properly classified as income from a passive activity.

Under § 1.469–5T(a)(2), an individual is treated as materially participating in an activity for a taxable year if the individual's participation in the activity for the year constitutes substantially all of the participation in the activity for the taxable year. Section 1.469–5T(a)(3) treats an individual as materially participating in an activity for a taxable year if the individual participates in the activity for more than 100 hours during the taxable year, and the individual's participation in the activity for the year is not less than that of any other individual. These rules are included because the service recognizes that the operation of some activities may not require more than 500 hours of participation, or may not require more than 500 hours of participation by any one individual during a taxable year.

Under § 1.469–5T(a)(4), an individual is treated as materially participating in all of the individual's significant participation activities for a taxable year if the individual's aggregate participation is significant participation activities for the year exceeds 500 hours. For purposes of this rule, a significant participation activity is a trade or business activity in which the individual participates for more than 100 hours during the taxable year but in which the individual does not materially participate for the year (without regard to this rule). This rule is included because the Service believes that an individual who devotes more than 500 hours during a taxable year to several activities, each of which is significant activity of such individual, should be treated similarly to an individual who devotes an equivalent amount of time to a single activity.

C. Tests Based on Material Participation in Prior Years

Under § 1.469–5T(a)(5), an individual is treated as materially participating in an activity for a taxable year if the individual materially participated in such activity for any five of the ten taxable years that immediately precede the taxable year.

Under § 1.469–5T(a)(6), an individual is treated as materially participating in a personal service activity for a taxable year if the taxpayer materially participated in the activity for any three taxable years that precede the taxable year. For purposes of this rule, an activity is a personal service activity if it principally involves the performance of personal services in (a) the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, or (b) any other trade or business in which capital is not a material income-producing factor.

These rules are included because the Service believes that an activity in which an individual has materially participated over a long period of time or a personal service activity in which an individual has participated for a substantial period of time is likely to represent the individual's principal livelihood rather than a passive investment. In particular, the Service does not believe that withdrawal from a longstanding active business or from a personal service business that has been active for a substantial period should convert an individual's earnings from the business to passive income. Thus, the Service believes the income from such businesses generally is part of the earned income base that section 469 was intended to protect. In the case of a longstanding active business (other than a personal service business), however, the Service believes that a continuing interest in such an activity is more appropriately viewed as an investment in a passive activity if the individual has not materially participated in the activity for a significant period of time during the 10-year period immediately preceding the taxable year.

D. Facts-and-Circumstances Test

Section 1.469–5T(a)(7) provides that an individual may be treated as materially participating in an activity for a taxable year based on all of the facts and circumstances. The general principles to be followed in applying the facts-and-circumstances test are not addressed in these regulations, and will be included in future regulations. Section 1.469–5T(b), however, provides that certain participation is insufficient to constitute material participation, or is not taken into account, under this test. Thus, except as provided in section 469(h)(3), the fact that an individual satisfies participation standards in other provisions of the Code and the regulations (such as the "material participation" standards in sections 1402 and 2032A) is not taken into account in determining whether the individual materially participates in an activity for purposes of section 469. In addition, an individual's participation in management of an activity is not taken into account in applying the facts-and-circumstances test to the individual if a paid manager participates in the activity or if the management services performed by such individual are exceeded by those performed by any other individual. Finally, an individual who does not participate in an activity for more than 100 hours during the taxable year cannot satisfy the facts-and-circumstances test for the year.

E. Treatment of Limited Partners

Section 469(h)(2) provides that, except as provided in regulations, no interest in a limited partnership shall be treated as an interest with respect to which a taxpayer materially participates. Section 1.469–5T(d) provides two exceptions to this general rule. First, the general rule does not apply to an activity for a taxable year if (a) the taxpayer participates in the activity for more than 500 hours during the taxable year, or (b) the taxpayer is treated as materially participating in the activity for the taxable year under either the longstanding material participant test or the personal-service-activity test. Second, the general rule does not apply with respect to a limited partnership

interest in a partnership in which the taxpayer is also a general partner.

F. Trusts and Estates

Material participation rules for trusts and estates will be included in future regulations providing rules for the application of section 469 to trusts, estates, and their beneficiaries.

G. Meaning of "Participation"

Section 1.469–5T(f) generally provides that all work done in an activity by an individual who owns an interest in the activity (other than an interest owned through a C corporation) is taken into account as participation by the individual in the activity, without regard to the capacity in which the individual does such work. Thus, work performed by an individual as an employee of a C corporation in connection with an activity in which the individual owns an interest (other than an interest owned through a C corporation) is taken into account as participation by the individual in the activity.

Section 1.469–5T(f) includes two exceptions to this general rule. First, under § 1.469–5T(f)(2)(i), work that is not customarily done by an owner is not taken into account if a principal purpose for the performance of such work is to avoid the disallowance of a passive activity loss or credit. Second, under § 1.469–5T(f)(2)(ii), work done by an individual in connection with an activity in the individual's capacity as an investor in the activity is not taken into account.

In the case of a married individual, § 1.469–5T(f)(3) provides that the participation of the individual's spouse is treated as participation by such individual for purposes of the passive loss and credit limitations, without regard to whether the participation of the spouse is material participation in its own right, whether the spouse owns an interest in the activity, or whether the individual and the individual's spouse file a joint return for the taxable year.

H. No Recordkeeping Requirements

Notwithstanding the quantitative tests set forth in the regulations, § 1.469–5T(f)(4) expressly provides that taxpayers need not keep contemporaneous records of their hours of participation in each activity. The Service recognizes that, while lawyers and certain other professionals are accustomed to maintaining detailed records of how they spend their work days, most individuals do not customarily maintain such records. Accordingly, under the regulations, taxpayers will be allowed to prove the requisite number of hours by any reasonable means, including, but not limited to, appointment books, calenders, and narrative summaries.

I. Material Participation for Taxable Years Beginning Before January 1, 1987

A taxpayer's participation in an activity for a taxable year beginning before January 1, 1987, may be relevant under rules such as those relating to longstanding material participants and personal service activities. Section 1.469–5T(j) provides that in any case in which it is necessary to determine whether an individual materially participated in an activity for any taxable year beginning before January 1, 1987 (other than a taxable year of a partnership, S corporation, estate, or trust ending after December 31, 1986), the individual is treated as materially participating in the activity for such year only if the individual participated in the activity for more than 500 hours during the year. The Service believes that the 500-hour test represents the only administrable rule for dealing with the determination of material participation for taxable years beginning before 1987.

XIX. Effective date and transition rules.

A. In General

Section 469 and the regulations thereunder generally apply for taxable years beginning after December 31, 1986. However, under § 1.469–11T(a)(2), specified rules in § 1.469–2T(f) treating certain income as not from a passive activity apply only for taxable years beginning after December 31, 1987. These provisions are § 1.469–2T(f)(3) (relating to the rental of nondepreciable property), § 1.469–2T(f)(4) (relating to equity-financed lending activities), § 1.469–2T(f)(5) (relating to the rental of property developed by the taxpayer), § 1.469–2T(f)(6) (relating to self-rented property), and § 1.469–2T(f)(7) (relating to passthrough entities licensing intangible property). In addition, § 1.469–2T(f)(6) does not apply to income attributable to the rental of property pursuant to a written binding contract entered into before February 19, 1988.

If a taxpayer is a partner, shareholder, or beneficiary of a partnership, S corporation, estate, or trust with a taxable year ending within the taxpayer's first taxable year beginning after December 31, 1986, passive items from such partnership, S corporation, estate, or trust are taken into account in computing the taxpayer's passive activity loss or credit even if such items are attributable to taxable years of such entities beginning before January 1, 1987, or are attributable to amounts paid or incurred prior to January 1, 1987. Under § 1.469–2T(e)(1), the treatment of an item of gross income, deduction, or credit from a fiscal year partnership or S corporation as passive activity gross income, as a passive activity deduction, or as a credit from a passive activity, respectively, is determined by reference to the taxpayer's participation in the activity to which such item relates for the partnership's or S corporation's taxable year in which the item arose. Future regulations relating to the treatment of beneficiaries of estates and trusts will provide guidance on this issue with respect to such taxpayers.

B. Effect of Events Occurring in Years Beginning Prior to 1987

Because in certain instances the treatment under the regulations of an item of gross income, deduction, or credit for the taxable year is determined in part by reference to events in prior taxable years, § 1.469–11T(a)(4) provides that events in prior taxable years generally are taken into account in making such determinations. For example, under § 1.469–5T(a)(5), an individual is treated as materially participating in an activity for the taxable year if the individual materially participated in the activity for any five of the ten taxable years that immediately precede the taxable year. Under § 1.469–11T(a)(4), a taxable year beginning prior to January 1, 1987, is taken into account for this purpose, but only if the individual participated in the activity for more than 500 hours during such taxable year.

C. Transitional Rule for Losses From Pre-Enactment Interest

1. In general. Section 469(m) provides a transitional rule for losses and credits attributable to pre-enactment interests in passive activities. Under that rule, which applies for taxable years beginning prior to 1991, the amount of the taxpayer's passive activity loss or passive activity credit that would be disallowed in the absence of the transitional rule is reduced by an amount equal to the product of a percentage and the lesser of (a) the amount of the passive activity loss or passive activity credit that would be disallowed in the absence of the transitional rule, or (b) the amount of the passive activity loss or passive activity credit that would be disallowed in the absence of the transitional rule (determined without taking into account previously disallowed passive items or passive items that are not attributable to the taxpayer's pre-enactment interests in passive activities). The percentage is

65 percent for taxable years beginning in 1987, 40 percent for taxable years beginning in 1988, 20 percent for taxable years beginning in 1989, and 10 percent for taxable years beginning in 1990.

Paragraphs (b) and (c) of § 1.469–11T (b) contain rules relating to the identification of pre-enactment interests in passive activities and the computation of the amount of the passive activity loss and credit that would be disallowed if passive items that are not attributable to the taxpayer's pre-enactment interests in passive activities were not taken into account.

2. Indentification of pre-enactment interests. Under section 469(m), a taxpayer's pre-enactment interests must be identified for each taxable year during the transition period. Thus, for each such taxable year, the taxpayer must determine which of the taxpayer's interests in activities that are passive activities for the taxable year are pre-enactment interests. Under § 1.469–11T (c)(1), a pre-enactment interest is a "qualified interest" in a "pre-enactment activity."

Section 1.469–11T(c)(3) provides that an activity is a "pre-enactment activity" if the activity was being conducted by any person on October 22, 1986, or if at least 50 percent (by value) of the property used in the activity during the taxable year was in existence or under construction on August 16, 1986, or was acquired or constructed at any time pursuant to a written binding contract in effect on August 16, 1986 (without regard to whether the taxpayer or any person related to the taxpayer was a party to such contract). Thus, for example, in the case of an activity of renting a building, the activity is a pre-enactment activity if the building was in existence or under construction on August 16, 1986.

Section 1.469–11T(c)(2) provides that an interest in an activity is a "qualified interest" if the interest was held by the taxpayer on October 22, 1986, and at all times thereafter, or was acquired by the taxpayer pursuant to written binding contracts to which the taxpayer was a party on October 22, 1986. Section 1.469–11T(c)(7) provides rules for determining whether a taxpayer was a party to a written binding contract on October 22, 1986. Under those rules, for example, if on October 22, 1986, a taxpayer was a party to a written binding contract to acquire a partnership interest, and the partnership was a party to a written bining contract to acquire an interest in an activity, the taxpayer is treated as a party to the partnership's contract.

3. Computation of pre-enactment loss and credit. Section 1.469–11T(b)(3) and (4) contains rules relating to the computation of the amount of the passive activity loss and credit that would be disallowed if the passive items that are not attributable to the taxpayer's pre-enactment interests in passive activities were not taken into account. The amounts determined under § 1.469–11T(b)(3) (relating to the pre-enactment loss) and § 1.469–11T(b)(4) (relating to the pre-enactment credit) are the amounts of the passive activity loss and the passive activity credit, respectively, that would be disallowed under § 1.469–1T(a)(1) taking into account all of the provisions of section 469 and the regulations thereunder, but applying such provisions as though the taxpayer had no interests in passive activities other than the taxpayer's pre-enactment interests. Under these rules, deductions and credits disallowed in a prior year and taken into account for the taxable year under section 469(b) (including deductions and credits attributable to pre-enactment interests) also are not taken into account.

Special Analyses

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. 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).

Drafting Information

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

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

Income taxes, Accounting, Deferred compensation plans.

Adoption of Amendments to the Regulations

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

PART 1—[AMENDED]

Income Tax Regulations

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

Authority: 26 U.S.C. 7805. * * * Sections 1.469–1T, 1.469–2T, 1.469–3T, 1.469–5T, and 1.469–11T also issued under 26 U.S.C. 469(1).

Par. 2. The following new sections are added to Part 1 in the appropriate place:

§ 1.469–0T Table of contents (temporary).

This section lists the captions that appear in the temporary regulations under section 469.

§ 1.469–1T General rules (temporary).

(a) Passive activity loss and credit disallowed.
(1) In general.
(2) Exceptions.
(b) Taxpayers to whom these rules apply.
(c) Cross references.
(1) Definition of passive activity.
(2) Passive activity loss.
(3) Passive activity credit.
(4) Effect of rules for other purposes.
(5) Special rule for oil and gas working interests.
(6) Treatment of disallowed losses and credits.
(7) Corporations subject to section 469.
(8) Consolidated groups.
(9) Joint returns.
(10) Material participation.
(11) Effective date and transition rules.
(12) Future regulations.
(d) Effect of section 469 and the regulations thereunder for other purposes.
(1) Treatment of items of passive activity income and gain.
(2) Coordination with section 1211.
(3) Treatment of passive activity losses.
(e) Definition of "passive activity."
(1) In general.
(2) Trade or business activity.
(i) In general.
(ii) Certain activities not involving the conduct of a trade or business treated as trade or business activities. [Reserved]
(3) Rental activity.
(i) In general.
(ii) Exceptions.
(iii) Average period of customer use.
(iv) Significant personal services.
(A) In general.
(B) Excluded services.
(v) Extraordinary personal services.
(vi) Rental of property incidental to a nonrental activity of the taxpayer.
(A) In general.
(B) Property held for investment.
(C) Property used in a trade or business.
(D) Property held for sale to customers.
(E) Lodging rented for convenience of employer.
(F) Unadjusted basis.
(vii) Property made available for use in a nonrental activity conducted by a partnership, S corporation, or joint venture in which the taxpayer owns an interest.
(viii) Examples.

§ 1.469–2T Passive activity loss (temporary).

§ 1.469–1T General rules (temporary).

(a) *Passive activity loss and credit disallowed*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section—

(i) The passive activity loss for the taxable year shall not be allowed as a deduction; and

(ii) The passive activity credit for the taxable year shall not be allowed.

(2) *Exceptions.* Paragraph (a)(1) of this section shall not apply to the passive activity loss or the passive activity credit for the taxable year to the extent provided in—

(i) Section 469(i) and the rules to be contained in § 1.469–9T (relating to losses and credits attributable to certain rental real estate activities); and

(ii) Section 1.469–11T (relating to losses and credits attributable to certain pre-enactment interests in activities).

(b) *Taxpayers to whom these rules apply.* The rules of section 469 and the regulations thereunder generally apply to—

(1) Individuals;

(2) Trusts (other than trusts (or portions of trusts) described in section 671);

(3) Estates;

(4) Personal service corporations (within the meaning of paragraph (g)(2)(i) of this section); and

(5) Closely held corporations (within the meaning of paragraph (g)(2)(ii) of this section).

(c) *Cross references*—(1) *Definition of "passive activity."* Rules relating to the definition of the term "passive activity" are contained in paragraph (e) of this section.

(2) *Passive activity loss.* Rules relating to the computation of the passive activity loss for the taxable year are contained in § 1.469–2T.

(3) *Passive activity credit.* Rules relating to the computation of the passive activity credit for the taxable year are contained in § 1.469–3T.

(4) *Effect of rules for other purposes.* Rules relating to the effect of section 469 and the regulations thereunder for other purposes under the Code are contained in paragraph (d) of this section.

(5) *Special rule for oil and gas working interests.* Rules relating to the treatment of losses and credits from certain interests in oil and gas wells are contained in paragraph (e)(4) of this section

(6) *Treatment of disallowed losses and credits.* Paragraph (f) of this section contains rules relating to—

(i) The treatment of deductions from passive activities in taxable years in which the passive activity loss is disallowed in whole or in part under paragraph (a)(1)(i) of this section; and

(ii) The treatment of credits from passive activities in taxable years in which the passive activity credit is disallowed in whole or in part under paragraph (a)(1)(ii) of this section.

(7) *Corporation subject to section 469.* Rules relating to the application of section 469 and regulations thereunder to C corporations are contained in paragraph (g) of this section.

(8) *Consolidated groups.* Rules relating to the application of section 469 and the regulations thereunder to affiliated groups of corporations filing a consolidated return for the taxable year are contained in paragraph (h) of this section.

(9) *Joint returns.* Rules relating to the application of section 469 and the regulations thereunder to spouses filing a joint return for the taxable year are contained in paragraph (j) of this section.

(10) *Material participation.* Rules defining the term "material participation" are contained in § 1.469–5T.

(11) *Effective date and transition rules.* Rules relating to the effective date of section 469 and the regulations thereunder and transition rules applicable to pre-enactment interests in activities are contained in § 1.469–11T.

(12) *Future regulations.* (i) Rules relating to former passive activities and changes in corporate status will be contained in paragraph (k) of this section.

(ii) Rules relating to the definition of "activity" will be contained in § 1.469–4T.

(iii) Rules relating to the treatment of deductions from activities that are disposed of in certain transactions will be contained in § 1.469–6T.

(iv) Rules relating to the treatment of self-charged items of income and expense will be contained in § 1.469–7T.

(v) Rules relating to the application of section 469 and the regulations thereunder to trusts, estates, and their beneficiaries will be contained in § 1.469–8T.

(vi) Rules relating to the treatment of income, deductions, and credits from certain rental real estate activities of individuals and certain estates will be contained in § 1.469–9T.

(vii) Rules relating to the application of section 469 to publicly traded partnerships will be contained in § 1.469–10T.

(d) *Effect of section 469 and the regulations thereunder for other purposes*—(1) *Treatment of items of passive activity income and gain.* Neither the provisions of section 469 (a)(1) and paragraph (a)(1) of this section nor the characterization of items of income or deduction as passive activity gross income (within the meaning of § 1.469–2T (c)) or passive activity deductions (within the meaning of § 1.469–2T (d)) affects the treatment of any item of income or gain under any provision of the Internal Revenue Code other than section 469. The following example illustrates the application of this paragraph (d)(1):

Example. (i) In 1991, an individual's only income and loss from passive activities are a $10,000 capital gain from passive activity × and a $12,000 ordinary loss from passive activity Y. The taxpayer also has a $10,000 capital loss that is not derived from a passive activity.

(ii) Under § 1.469–2T (b), the taxpayer has a $2,000 passive activity loss for the taxable year. The only effect of section 469 and the regulations thereunder is to disallow a deduction for the taxpayer's $2,000 passive activity loss for the taxable year. Thus, the taxpayer's capital loss for the taxable year is allowed because the $10,000 capital gain from passive activity × is taken into account under section 1211 (b) in computing the taxpayer's allowable capital loss for the year.

(2) *Coordination with section 1211.* A passive activity deduction that is not disallowed for the taxable year under section 469 and the regulations thereunder may nonetheless be disallowed for the taxable year under section 1211. The following example illustrates the application of this paragraph (d)(2):

Example. In 1987, an individual derives $10,000 of ordinary income from passive activity ×, no gains from the sale or exchange of captial assets or assets used in a trade or business, $12,000 of capital loss from passive activity Y, and no income, gain, deductions, or losses from any other passive activity. The capital loss from activity Y is a passive activity deduction (within the meaning of § 1.469–2T(d)). Under section 469 and the regulations thereunder, the taxpayer is allowed $10,000 of the $12,000 passive activity deduction and has a $2,000 passive activity loss for the taxable year. Since the $10,000 passive activity deduction allowed under section 469 is a capital loss, such deduction is allowable for the taxable year only to the extent provided under section 1211. Therefore, the taxpayer is allowed $3,000 of the $10,000 capital loss under section 1211 and has a $7,000 capital loss carryover (within the meaning of section 1212 (b)) to the succeeding taxable year.

(3) *Treatment of passive activity losses.* Except as otherwise provided by regulations, a deduction that is disallowed for a taxable year under section 469 and the regulations thereunder is not taken into account as a deduction that is allowed for the taxable year in computing the amount subject to any tax imposed by subtitle A of the Internal Revenue Code. The following example illustrates the application of this paragraph (d)(3):

Example. An individual has a $5,000 passive activity loss for a taxable year, all of which is disallowed under paragraph (a)(1) of

this section. All of the disallowed loss is allocated under paragraph (f) of this section to activities that are trades or businesses (within the meaning of section 1402(c)). Such loss is not taken into account for the taxable year in computing the taxpayer's taxable income subject to tax under section 1. In addition, under this paragraph (d)(3), such loss is not taken into account for the taxable year in computing the taxpayer's net earnings from self-employment subject to tax under section 1401.

(e) *Definition of "passive activity"*—(1) *In general.* Except as otherwise provided in this paragraph (e), an activity is a passive activity of the taxpayer for a taxable year if and only if the activity—

(i) Is a trade or business activity (within the meaning of paragraph (e)(2) of this section) in which the taxpayer does not materially participate for such taxable year; or

(ii) Is a rental activity (within the meaning of paragraph (e) (3) of this section), without regard to whether or to what extent the taxpayer participates in such activity.

(2) *Trade or business activity*—(i) *In general.* An activity is a trade or business activity for a taxable year if for such year—

(A) (*1*) The activity involves the conduct of a trade or business (within the meaning of section 162);

(*2*) Research or experimental expenditures paid or incurred with respect to the activity are deductible under section 174 (or would be deductible if the taxpayer adopted the method described in section 174(a)); or

(*3*) The activity is described in paragraph (e)(2)(ii) of this section; and

(B) The activity is not a rental activity or an activity involving the rental of property described in paragraph (e)(3)(vi)(B) of this section.

(ii) *Certain activities not involving the conduct of a trade or business treated as trade or business activities.* [Reserved]

(3) *Rental activity*—(1) *In general.* Except as otherwise provided in this paragraph (e)(3), an activity is a rental activity for a taxable year if—

(A) During such taxable year, tangible property held in connection with the activity is used by customers or held for use by customers; and

(B) The gross income attributable to the conduct of the activity during such taxable year represents (or, in the case of an activity in which property is held for use by customers, the expected gross income from the conduct of the activity will represent) amounts paid or to be paid principally for the use of such tangible 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).

(ii) *Exceptions.* For purposes of this paragraph (e)(3), an activity involving the use of tangible property is not a rental activity for a taxable year if for such taxable year—

(A) The average period of customer use for such property is seven days or less;

(B) The average period of customer use for such property is 30 days or less, and significant personal services (within the meaning of paragraph (e)(3)(iv) of this section) are provided by or on behalf of the owner of the property in connection with making the property available for use by customers;

(C) Extraordinary personal services (within the meaning of paragraph (e)(3)(v) of this section) are provided by or on behalf of the owner of the property in connection with making such property available for use by customers (without regard to the average period of customer use);

(D) The rental of such property is treated as incidental to a nonrental activity of the taxpayer under paragraph (e)(3)(vi) of this section;

(E) The taxpayer customarily makes the property available during defined business hours for nonexclusive use by various customers; or

(F) The provision of the property for use in an activity conducted by a partnership, S corporation, or joint venture in which the taxpayer owns an interest is not a rental activity under paragraph (e)(3)(vii) of this section.

(iii) *Average period of customer use.* For purposes of this paragraph (e)(3), the average period of customer use for property held in connection with an activity is determined for a taxable year by dividing—

(A) The aggregate number of days in all periods of customer use for such property ending during the taxable year; by

(B) The number of such periods of customer use.

For this purpose, each period during which a customer has a continuous or recurring right to use an item of property held in connection with the activity (without regard to whether the customer uses the property for the entire period or whether such right to use the property is pursuant to a single agreement or to renewals thereof) is treated as a separate period of customer use.

(iv) *Significant personal services*—(A) *In general.* For purposes of paragraph (e)(3)(ii)(B) of this section, personal services include only services performed by individuals, and do not include excluded services (within the meaning of paragraph (e)(3)(iv)(B) of this section). In determining whether personal services provided in connection with making property available for use by customers are significant, all of the relevant facts and circumstances shall be taken into account. Relevant facts and circumstances include the frequency with which such services are provided, the type and amount of labor required to perform such services, and the value of such services relative to the amount charged for the use of the property.

(B) *Excluded services.* For purposes of paragraph (e)(3)(iv)(A) of this section, the term "excluded services" means, with respect to any property made available for use by customers—

(*1*) Services necessary to permit the lawful use of the property;

(*2*) Services performed in connection with the construction of improvements to the property, or in connection with the performance of repairs that extend the property's useful life for a period substantially longer than the average period for which such property is used by customers; and

(*3*) Services, provided in connection with the use of any improved real property, that are similar to those commonly provided in connection with long-term rentals of high-grade commercial or residential real property (e.g., cleaning and maintenance of common areas, routine repairs, trash collection, elevator service, and security at entrances or perimeters).

(v) *Extraordinary personal services.* For purposes of paragraph (e)(3)(ii)(C) of this section, extraordinary personal services are provided in connection with making property available for use by customers only if the services provided in connection with the use of the property are performed by individuals, and the use by customers of the property is incidental to their receipt of such services. For example, the use by patients of a hospital's boarding facilities generally is incidental to their receipt of the personal services provided by the hospital's medical and nursing staff. Similarly, the use by students of a boarding school's dormitories generally is incidental to their receipt of the personal services provided by the school's teaching staff.

(vi) *Rental of property incidental to a nonrental activity of the taxpayer*—(A) *In general.* For purposes of paragraph (e)(3)(ii)(D) of this section, the rental of property shall be treated as incidental to a nonrental activity of the taxpayer only

to the extent provided in this paragraph (e)(3)(vi).

(B) *Property held for investment.* The rental of property during a taxable year shall be treated as incidental to an activity of holding such property for investment if and only if—

(*1*) The principal purpose for holding the property during such taxable year 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

(*2*) The gross rental income from the property for such taxable year is less than two percent of the lesser of—

(*i*) The unadjusted basis of such property; and

(*ii*) The fair market value of such property.

(C) *Property used in a trade or business.* The rental of property during a taxable year shall be treated as incidental to a trade or business activity (within the meaning of paragraph (e)(2) of this section) if and only if—

(*1*) The taxpayer owns an interest in such trade or business activity during the taxable year;

(*2*) The property was predominantly used in such trade or business activity during the taxable year or during at least two of the five taxable years that immediately precede the taxable year; and

(*3*) The gross rental income from such property for the taxable year is less than two percent of the lesser of—

(*i*) The unadjusted basis of such property; and

(*ii*) The fair market value of such property.

(D) *Property held for sale to customers.* The rental of property during the taxable year in which the property is sold or exchanged (in a transaction in which gain or loss is recognized) shall be treated as incidental to an activity of dealing in such property if at the time of the sale or exchange the property is held by the taxpayer primarily for sale to customers in the ordinary course of a trade or business of the taxpayer (within the meaning of section 1221(1)).

(E) *Lodging rented for convenience of employer.* The provision of lodging to an employee or to an employee's spouse or dependents shall be treated as incidental to the activity (or activities) of the taxpayer in which the employee performs services if such lodging is furnished for the taxpayer's convenience (within the meaning of section 119).

(F) *Unadjusted basis.* For purposes of this paragraph (e)(3)(vi), the term "unadjusted basis" means adjusted basis determined without regard to any adjustment described in section 1016 that decreases basis.

(vii) *Property made available for use in a nonrental activity conducted by a partnership, S corporation, or joint venture in which the taxpayer owns an interest.* If the taxpayer owns an interest in a partnership, S corporation, or joint venture conducting an activity other than a rental activity, and the taxpayer provides property for use in the activity in the taxpayer's capacity as an owner of an interest in such partnership, S corporation, or joint venture, the provision of such property is not a rental activity. Thus, if a partner contributes the use of property to a partnership, none of the partner's distributive share of partnership income is income from a rental activity unless the partnership is engaged in a rental activity. In addition, a partner's gross income attributable to a payment described in section 707(c) is not income from a rental activity under any circumstances (see § 1.469–2T (e)(2)). The determination of whether property used in an activity is provided by the taxpayer in the taxpayer's capacity as an owner of an interest in a partnership, S corporation, or joint venture shall be made on the basis of all of the facts and circumstances.

(viii) *Examples.* The following examples illustrate the application of this paragraph (e)(3):

Example (1). The taxpayer is engaged in an activity of leasing photocopying equipment. The average period of customer use for the equipment exceeds 30 days. Pursuant to the lease agreements, skilled technicians employed by the taxpayer maintain the equipment and service malfunctioning equipment for no additional charge. Service calls occur frequently (three times per week on average) and require substantial labor. The value of the maintenance and repair services (measured by the cost to the taxpayer of employees performing these services) exceeds 50 percent of the amount charged for the use of the equipment. Under these facts, services performed by individuals are provided in connection with the use of the photocopying equipment, but the customers' use of the photocopying equipment is not incidental to their receipt of the services. Therefore, extraordinary personal services (within the meaning of paragraph (e)(3)(v) of this section) are not provided in connection with making the photocopying equipment available for use by customers, and the activity is a rental activity.

Example (2). The facts are the same as in example (1), except that the average period of customer use for the photocopying equipment exceeds seven days but does not exceed 30 days. Under these facts, significant personal services (within the meaning of paragraph (e)(3)(iv) of this section) are provided in connection with making the photocopying equipment available for use by customers and, under paragraph (e)(3)(ii)(B) of this section, the activity is not a rental activity.

Example (3). The taxpayer is engaged in an activity of transporting goods for customers. In conducting the activity, the taxpayer provides tractor-trailers to transport goods for customers pursuant to arrangements under which the tractor-trailers are selected by the taxpayer, may be replaced at the sole option of the taxpayer, and are operated and maintained by drivers and mechanics employed by the taxpayer. The average period of customer use for the tractor-trailers exceeds 30 days. Under these facts, the use of tractor-trailers by the taxpayer's customers is incidental to their receipt of personal services provided by the taxpayer. Accordingly, the services performed in the activity are extraordinary personal services (within the meaning of paragraph (e)(3)(v) of this section) and, under paragraph (e)(3)(ii)(C) of this section, the activity is not a rental activity.

Example (4). The taxpayer is engaged in an activity of owning and operating a residential apartment hotel. For the taxable year, the average period of customer use for apartments exceeds seven days but does not exceed 30 days. In addition to cleaning public entrances, exists, stairways, and lobbies, and collecting and removing trash, the taxpayer provides a daily maid and linen service at no additional charge. All of the services other than maid and linen service are excluded services (within the meaning of paragraph (e)(3)(iv)(B) of this section), because such services are similar to those commonly provided in connection with long-term rentals of high-grade residential real property. The value of the maid and linen services (measured by the cost to the taxpayer of employees performing such services) is less than 10 percent of the amount charged to tenants for occupancy of apartments. Under these facts, neither significant personal services (within the meaning of paragraph (e)(3)(iv) of this section) nor extraordinary personal services (within the meaning of paragraph (e)(3)(v) of this section) are provided in connection with making apartments available for use by customers. Accordingly, the activity is a rental activity.

Example (5). The taxpayer owns 1,000 acres of unimproved land with a fair market value of $350,000 and an unadjusted basis of $210,000. The taxpayer holds the land for the principal purpose of realizing gain from appreciation. In order to defray the cost of carrying the land, the taxpayer leases the land to a rancher, who uses the land to graze cattle and pays rent of $4,000 per year. Thus, the gross rental income from the land is less than two percent of the lesser of the fair market value and the unadjusted basis of the land (.02×$210,000=$4,200). Accordingly, under paragraph (e)(3)(ii)(D) of this section, the rental of the land is not a rental activity because the rental is treated under paragraph (e)(3)(vi)(B) of this section as incidental to an activity of holding the property for investment.

Example (6). (i) A calendar year taxpayer owns an interest in a farming activity which is a trade or business activity (within the meaning of paragraph (e)(2) of this section) and owns farmland which was used in the

farming activity in 1985 and 1986. The fair market value of the farmland is $350,000 and its unadjusted basis is $210,000. In 1987, 1988, and 1989, the taxpayer continues to own an interest in the farming activity but does not use the land in the activity. In 1987, the taxpayer leases the land for $4,000 to a rancher, who uses the land to graze cattle. In 1988, the taxpayer leases the land for $10,000 to a film production company, which uses the land to film scenes for a movie. In 1989, the taxpayer again leases the land for $4,000 to the rancher.

(ii) For 1987 and 1989, the taxpayer owns an interest in a trade or business activity, and the farmland which the taxpayer leases to the rancher was used in such activity for two out of the five immediately preceding taxable years. In addition, the gross rental income from the land ($4,000) is less than two percent of the lesser of the fair market value and the unadjusted basis of the land (.02×$210,000=$4,200). Accordingly, the taxpayer's rental of the land is treated under paragraph (e)(3)(vi)(C) of this section as incidental to the taxpayer's farming activity, and is not a rental activity.

(iii) Because the taxpayer's gross rental income from the land for 1988 ($10,000) is not less than two percent of the lesser of the fair market value and the unadjusted basis of the land, the requirement of paragraph (e)(3)(vi)(C)(*3*) of this section is not met. Therefore, the taxpayer's rental of the land in 1988 is not treated as incidental to the taxpayer's farming activity and is a rental activity.

Example (7). (i) In 1988, the taxpayer acquires vacant land for the purpose of constructing a shopping mall. Before commencing construction, the taxpayer leases the land under a one-year lease to an automobile dealer, who uses the land to park cars held in its inventory. The taxpayer commences construction of the shopping mall in 1989.

(ii) The taxpayer acquired the land for the principal purpose of constructing the shopping mall, not for the principal purpose or realizing gain from the appreciation of the property. Therefore, the rental of the property in 1988 is not treated under paragraph (e)(3)(vi)(B) of this section as incidental to an activity of holding the property for investment.

(iii) The land has not been used in any taxable year in any trade or business of the taxpayer. Therefore, the rental of the property in 1988 is not treated under paragraph (e)(3)(vi)(C) of this section as incidental to a trade or business activity.

(iv) Since the rental of the land in 1988 is not treated under paragraph (e)(3)(vi) of this section as incidental to a nonrental activity of the taxpayer, the rental of the land in 1988 is a rental activity. See § 1.469–2T(f)(3) for a special rule relating to the treatment of gross income from the rental of nondepreciable property.

Example (8). The taxpayer makes farmland available to a tenant farmer pursuant to an arrangement designated a "crop-share lease." Under the arrangement, the tenant is required to use the tenant's best efforts to farm the land and produce marketable crops. The taxpayer is obligated to pay 50 percent of the costs incurred in the activity (without regard to whether any crops are successfully produced or marketed), and is entitled to 50 percent of the crops produced (or 50 percent of the proceeds from marketing the crops). For purposes of paragraph (e)(3)(vii) of this section, the taxpayer is treated as providing the farmland for use in a farming activity conducted by a joint venture in the taxpayer's capacity as an owner of an interest in the joint venture. Accordingly, under paragraph (e)(3)(ii)(F) of this section, the taxpayer is not engaged in a rental activity, without regard to whether the taxpayer performs any services in the farming activity.

Example (9). The taxpayer owns a taxicab which the taxpayer operates during the day and leases to another driver for use at night under a one-year lease. Under the terms of the lease, the other driver is charged a fixed rental for use of the taxicab. Assume that, under the rules to be contained in § 1.469–4T, the taxpayer is engaged in two separate activities, an activity of operating the taxicab and an activity of making the taxicab available for use by the other driver. Under these facts, the period for which the other driver uses the taxicab exceeds 30 days, and the taxpayer does not provide extraordinary personal services in connection with making the taxicab available to the other driver. Accordingly, the lease of the taxicab is a rental activity.

Example (10). The taxpayer operates a golf course. Some customers of the golf course pay green fees upon each use of the golf course, while other customers purchase weekly, monthly, or annual passes. The golf course is open to all customers from sunrise to sunset every day of the year except certain holidays and days on which the taxpayer determines that the course is to wet for play. The taxpayer thus makes the golf course available during prescribed hours for nonexclusive use by various customers. Accordingly, under paragraph (e)(3)(ii)(E) of this section, the taxpayer is not engaged in a rental activity, without regard to the average period of customer use for the golf course.

(4) *Special rule for oil and gas working interests*—(i) *In general.* Except as otherwise provided in paragraph (e)(4)(ii) of this section, an interest in an oil or gas well drilled or operated pursuant to a working interest (within the meaning of paragraph (e)(4)(iv) of this section) of a taxpayer is not an interest in a passive activity for the taxpayer's taxable year (without regard to whether the taxpayer materially participates in such activity) if at any time during such taxable year the taxpayer holds such working interest either—

(A) Directly; or

(B) Through an entity that does not limit the liability of the taxpayer with respect to the drilling or operation of such well pursuant to such working interest.

(ii) *Exception for deductions attributable to a period during which liability is limited*—(A) *In general.* If paragraph (e)(4)(i) of this section applies for a taxable year to the taxpayer's interest in an oil or gas well that would, but for the application of paragraph (e)(4)(i) of this section, by an interest in a passive activity for the taxable year, and the taxpayer has a net loss (within the meaning of paragraph (e)(4)(ii)(C)(*3*) of this section) from the well for the taxable year—

(*1*) The taxpayer's disqualified deductions (within the meaning of paragraph (e)(4)(ii)(C)(*2*) of this section) from such oil or gas well for such year shall be treated as passive activity deductions for such year (within the meaning of § 1.469–2T(d)); and

(*2*) A ratable portion (within the meaning of paragraph (e)(4)(ii)(C)(*4*) of this section) of the taxpayer's gross income from such oil or gas well for such year shall be treated as passive activity gross income for such year (within the meaning of § 1.469–2T(c)).

(B) *Coordination with rules governing the identification of disallowed passive activity deductions.* If gross income and deductions from an activity for a taxable year are treated as passive activity gross income and passive activity deductions under paragraph (e)(4)(ii)(A) of this section, such activity shall be treated as a passive activity for such year for purposes of applying paragraph (f) (2) and (4) of this section.

(C) *Meaning of certain terms.* For purposes of this paragraph (e)(4)(ii), the following terms shall have the meanings set forth below:

(*1*) *Allocable deductions.* The deductions allocable to a taxable year are any deductions that arise in such year (within the meaning of § 1.469–2T (d)(8)) and any deductions that are treated as deductions for such year under paragraph (f)(4) of this section.

(*2*) *Disqualified deductions.* The taxpayer's "disqualified deductions" from an oil or gas well for a taxable year are the taxpayer's deductions—

(*i*) That are attributable to such well and allocable to the taxable year; and

(*ii*) With respect to which economic performance (within the meaning of section 461(h), without regard to section 461 (h)(3) or (i)(2)) occurs at a time during which the taxpayer's only interest in the working interest is held through an entity that limits the taxpayer's liability with respect to the drilling or operation of such well.

(*3*) *Net loss.* The "net loss" of a taxpayer from an oil or gas well for a taxable year equals the amount by which the taxpayer's deductions that are attributable to such oil or gas well and allocable to such year exceeds the gross

income of the taxpayer from such well for such year.

(4) *Ratable portion.* The "ratable portion" of the taxpayer's gross income from an oil or gas well for a taxable year equals the total amount of such gross income multiplied by the fraction obtained by dividing—

(*i*) The disqualified deductions from such oil or gas well for the taxable year; by

(*ii*) The total amount of the deductions that are attributable to such oil or gas well and allocable to the taxable year.

(iii) *Examples.* The following examples illustrate the application of paragraphs (e)(4) (i) and (ii) of this section:

Example (1). (i) A, a calendar year individual, acquires on January 1, 1987, a general partnership interest in P, a calendar year partnership that holds a working interest in an oil or gas property. Pursuant to the partnership agreement, A is entitled to convert the general partnership interest into a limited partnership interest at any time. On December 1, 1987, pursuant to a contract with D, an independent drilling contractor, P commences drilling a single well pursuant to the working interest. Under the drilling contract, P pays D for the drilling only as the work is performed. All drilling costs are deducted by P in the year in which they are paid. At the end of 1987, A converts the general partnership interest into a limited partnership interest, effective immediately. The drilling of the well is completed on February 28, 1988. A's interest in the well would but for this paragraph (e)(4) be an interest in a passive activity.

(ii) Throughout 1987, A holds the working interest through an entity that does not limit A's liability with respect to the drilling of the well pursuant to the working interest. In 1988, however, A holds the working interest through an entity that limits A's liability with respect to the drilling and operation of the well throughout such year. Accordingly, under paragraph (e)(4)(i) of this section, A's interest in P's well is not an interest in a passive activity for 1987 but is an interest in a passive activity for 1988. Moreover, since economic performance occurs in 1987 with respect to all items of deduction for drilling costs that are allocable to 1987, A has no disqualified deductions for 1987.

Example (2). The facts are the same as in example (1), except that all costs of drilling under the contract with D (including costs of drilling performed after 1987) are paid before the end of 1987 and A has a net loss for 1987. In addition, A has $15,000 of total deductions that are attributable to the well and allocable to 1987, but economic performance (as that term is used in paragraph (e)(4)(ii)(C)(*2*)(*ii*) of this section) does not occur with respect to $5,000 of those deductions until 1988. Under paragraph (e)(4)(ii) of this section, the $5,000 of deductions with respect to which economic performance occurs in 1988 are disqualified deductions and are treated as passive activity deductions for 1987. In addition, one-third ($5,000/$15,000) of A's gross income from the well for 1987 is treated as passive activity gross income.

(iv) *Definition of "working interest."* For purposes of section 469 and the regulations thereunder, the term "working interest" means an operating mineral interest (within the meaning of section 614(d) and the regulations thereunder).

(v) *Entities that limit liability*—(A) *General rule.* For purposes of paragraph (e)(4)(i)(B) of this section, an entity limits the liability of the taxpayer with respect to the drilling or operation of a well pursuant to a working interest held through such entity if the taxpayer's interest in the entity is in the form of—

(*1*) A limited partnership interest in a partnership in which the taxpayer is not a general partner;

(*2*) Stock in a corporation; or

(*3*) An interest in any entity (other than a limited partnership or corporation) that, under applicable State law, limits the potential liability of a holder of such an interest for all obligations of the entity to a determinable fixed amount (for example, the sum of the taxpayer's capital contributions).

(B) *Other limitations disregarded.* For purposes of this paragraph (e)(4), protection against loss through any of the following is not taken into account in determining whether a taxpayer holds a working interest through an entity that limits the taxpayer's liability:

(*1*) An indemnification agreement;

(*2*) A stop loss arrangement;

(*3*) Insurance;

(*4*) Any similar arrangement; or

(*5*) Any combination of the foregoing.

(C) *Examples.* The following examples illustrate the application of this paragraph (e)(4)(v):

Example (1). A owns a 20 percent interest as a general partner in the capital and profits of P, a partnership which owns oil or gas working interests. The other partners of P agree to indemnify A against liability in excess of A's capital contribution for any of P's costs and expenses with respect to P's working interests. As a general partner, however, A is jointly and severally liable for all of P's liabilities and, under paragraph (e)(4)(v)(B)(*1*) of this section, the indemnification agreement is not taken into account in determining whether A holds the working interests through an entity that limits A's liability. Accordingly, the partnership does not limit A's liability with respect to the drilling or operation of wells pursuant to the working interests.

Example (2). B owns a 10 percent interest in X, an entity (other than a limited partnership or corporation) created under applicable State law to hold working interests in oil or gas properties. Under applicable State law, B is liable without limitation for 10 percent of X's costs and expenses with respect to X's working interests but is not liable for the remaining 90 percent of such costs and expenses. Since B's liability for the obligations of X is not limited to a determinable fixed amount (within the meaning of paragraph (e)(4)(v)(A)(*3*) of this section), the entity does not limit B's liability with respect to the drilling or operation of wells pursuant to the working interests.

Example (3). C is both a general partner and a limited partner in a partnership that owns a working interest in oil or gas property. Because C owns an interest as a general partner in each well drilled pursuant to the working interest, C's entire interest in each well drilled pursuant to the working interest is treated under paragraph(e)(4)(i) of this section as an interest in an activity that is not a passive activity (without regard to whether C materially participates in such activity).

(vi) *Cross reference to special rule for income from certain oil or gas properties.* A special rule relating to the treatment of income from certain interests in oil or gas properties is contained in § 1.469–2T(c)(6).

(5) *Rental of dwelling unit.* An activity involving the rental of a dwelling unit that is used as a residence by the taxpayer during the taxable year (within the meaning of section 280A(c)(5)) is not a passive activity of the taxpayer for such year.

(6) *Activity of trading personal property*—(i) *In general.* An activity of trading personal property for the account of owners of interests in the activity is not a passive activity (without regard to whether such activity is a trade or business activity (within the meaning of paragraph (e)(2) of this section)).

(ii) *Personal property.* For purposes of this paragraph (e)(6), the term "personal property" means personal property (within the meaning of section 1092(d), without regard to paragraph (3) thereof).

(iii) *Example.* The following example illustrates the application of this paragraph (e)(6):

Example. A partnership is a trader of stocks, bonds, and other securities (within the meaning of section 1236(c)). The capital employed by the partnership in the trading activity consists of amounts contributed by the partners in exchange for their partnership interests, and funds borrowed by the partnership. The partnership derives gross income from the activity in the form of interest, dividends, and capital gains. Under these facts, the partnership is treated as conducting an activity of trading personal property for the account of its partners. Accordingly, under this paragraph (e)(6), the activity is not a passive activity.

(f) *Treatment of disallowed passive activity losses and credits*—(1) *Scope of this paragraph.* The rules in this paragraph (f)—

(i) Identify the passive activity deductions that are disallowed for any taxable year in which all or a portion of the taxpayer's passive activity loss is disallowed under paragraph (a)(1)(i) of this section;

(ii) Identify the credits from passive activities that are disallowed for any taxable year in which all or a portion of the taxpayer's passive activity credit is disallowed under paragraph (a)(1)(i) of this section; and

(iii) Provide for the carryover of disallowed deductions and credits.

(2) *Identification of disallowed passive activity deductions*—(i) *Allocation of disallowed passive activity loss among activities*—(A) *General rule.* If all or any portion of the taxpayer's passive activity loss is disallowed for the taxable year under paragraph (a)(1)(i) of this section, a ratable portion of the loss (if any) from each passive activity of the taxpayer is disallowed. For purposes of the preceding sentence, the ratable portion of a loss from an activity is computed by multiplying the passive activity loss that is disallowed for the taxable year by the fraction obtained by dividing—

(*1*) The loss from the activity for the taxable year; by

(*2*) The sum of the losses for the taxable year from all activities having losses for such year.

(B) *Loss from an activity.* For purposes of this paragraph (f)(2)(i), the term "loss from an activity" means—

(*1*) The amount by which the passive activity deductions from the activity for the taxable year (within the meaning of § 1.469–2T(d)) exceed the passive activity gross income from the activity for the taxable year (within the meaning of § 1.469–2T(c)); reduced by

(*2*) Any part of such amount that is allowed under section 469(i) and the rules to be contained in § 1.469–9T (relating to the $25,000 allowance for certain rental real estate activities).

(C) *Significant participation passive activities.* If the taxpayer's passive activity gross income from significant participation passive activities (within the meaning of § 1.469–2T(f) (2)(ii)) for the taxable year (determined without regard to § 1.469–2T(f)(2) through (4)) exceeds the taxpayer's passive activity deductions from such activities for the taxable year, such activities shall be treated, solely for purposes of applying this paragraph (f)(2)(i) for the taxable year, as a single activity that does not have a loss for such taxable year.

(D) *Examples.* The following examples illustrate the application of this paragraph (f)(2)(i):

Example (1). An individual holds interests in three passive activities, A, B, and C. The gross income and deductions from these activities for the taxable year are as follows:

	A	B	C	Total
Gross income	$7,000	$4,000	$12,000	$23,000
Deductions	(16,000)	(20,000)	(8,000)	(44,000)
Net income (loss)	($9,000)	($16,000)	$4,000	($21,000)

The taxpayer's $21,000 passive activity loss for the taxable year is disallowed under paragraph (a)(1)(i) of this section. Therefore, a ratable portion of the losses from activities A and B is disallowed. The disallowed portion of each loss is determined as follows:

A: $21,000 × $9,000/$25,000	$7,560
B: $21,000 × $16,000/$25,000	$13,440
Total	$21,000

Example (2). An individual holds interests in four passive activities, A, B, C, and D. The results of operations of these activities for the taxable year are as follows:

	A	B	C	D	Total
Gross income	15,000	5,000	10,000	10,000	40,000
Deductions	(5,000)	(10,000)	(20,000)	(8,000)	(43,000)
Net income (loss)	10,000	(5,000)	(10,000)	2,000	(3,000)

Activities A and B are significant participation passive activities (within the meaning of § 1.469–2T(f)(2)(ii)). The gross income from these activities for the taxable year ($20,000) exceeds the passive activity deductions from those activities for the taxable year ($15,000) by $5,000 and, under § 1.469–2T(f)(2), $5,000 of gross income from those activities is treated as not from a passive activity. Therefore, solely for purposes of applying this paragraph (f)(2)(i) for the taxable year, activities A and B are treated as a single activity that does not have a loss for the taxable year. Under § 1.469–2T(b), the taxpayer's passive activity loss for the taxable year is $8,000 ($43,000 of passive activity deductions minus $35,000 of passive activity gross income). The results of treating activities A and B as a single activity that does not have a loss for the taxable year is that none of the $8,000 passive activity loss is allocated under this paragraph (f)(2)(i) to activity B for the taxable year, even though the taxpayer incurred a loss in that activity for the taxable year.

(ii) *Allocation within loss activities*—(A) *In general.* If all or any portion of a taxpayer's loss from an activity is disallowed under paragraph (f)(2)(i) of this section for the taxable year, a ratable portion of each passive activity deduction (other than an excluded deduction (within the meaning of paragraph (f)(2)(ii)(B) of this section)) of the taxpayer from such activity is disallowed. For purposes of the preceding sentence, the ratable portion of a passive activity deduction of a taxpayer is the amount of the disallowed portion of the taxpayer's loss from the activity (within the meaning of paragraph (f)(2)(i)(B) of this section) for the taxable year multiplied by the fraction obtained by dividing—

(*1*) The amount of such deduction; by

(*2*) The sum of all passive activity deductions (other than excluded deductions (within the meaning of paragraph (f)(2)(ii)(B) of this section)) of the taxpayer from such activity from the taxable year.

(B) *Excluded deductions.* The term "excluded deduction" means any passive activity deduction of a taxpayer that is taken into account in computing the taxpayer's net income from an item of property for a taxable year in which an amount of the taxpayer's gross income from such item of property is treated as not from a passive activity under § 1.469–2T(c)(6) or § 1.469–2T(f)(5), (6), or (7).

(iii) *Separately identified deductions.* In identifying the deductions from an activity that are disallowed under this paragraph (f)(2), the taxpayer need not account separately for a deduction unless such deduction may, if separately taken into account, result in an income tax liability for any taxable year different from that which would result were such deduction not taken into account separately. For related rules applicable to partnerships and S corporations, see § 1.702–1(a)(8)(ii) and section 1366(a)(1)(A), respectively. Deductions that must be accounted for separately include (but are not limited to) deductions that—

(A) Arise in a rental real estate activity (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in taxable years in which the taxpayer actively participates (within the meaning of section 469(i) and the

rules to be contained in § 1.469–9T) in such activity;

(B) Arise in a rental real estate activity (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in taxable years in which the taxpayer does not actively participate (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in such activity; or

(C) Are taken into account under section 1211 (relating to the limitation on capital losses) or section 1231 (relating to property used in a trade or business and involuntary conversions).

(3) *Identification of disallowed credits from passive activities*—(i) *General rule.* If all or any portion of the taxpayer's passive activity credit is disallowed for the taxable year under paragraph (a)(1)(ii) of this section, a ratable portion of each credit from each passive activity of the taxpayer is disallowed. For purposes of the preceding sentence, the ratable portion of a credit of a taxpayer is computed by multiplying the portion of the taxpayer's passive activity credit that is disallowed for the taxable year by the fraction obtained by dividing—

(A) The amount of the credit; by

(B) The sum of all of the taxpayer's credits from passive activities for the taxable year.

(ii) *Coordination rule.* For purposes of paragraph (f)(3)(i) of this section, the credits from a passive activity do not include any credit or portion of a credit that—

(A) Is allowed for the taxable year under section 469(i) and the rules to be contained in § 1.469–9T (relating to the $25,000 allowance for certain rental real estate activities); or

(B) Increases the basis of property during the taxable year under section 469(j)(9) and the rules to be contained in § 1.469–6T (relating to the election to increase the basis of certain property by disallowed credits).

(iii) *Separately identified credits.* In identifying the credits from an activity that are disallowed under this paragraph (f)(3), the taxpayer need not account separately for any credit unless such credit may, if separately taken into account, result in an income tax liability for any taxable year different from that which would result were such credit not taken into account separately. For related rules applicable to partnerships and S corporations, see § 1.702–1(a)(8)(ii) and section 1366(a)(1)(A), respectively. Credits that must be accounted for separately include (but are not limited to)—

(A) Credits (other than the low-income housing and rehabilitation investment credits) from a rental real estate activity (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) that arise in a taxable year in which the taxpayer actively participates (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in such activity;

(B) Credits (other than the low-income housing and rehabilitation investment credits) from a rental real estate activity (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) that arise in a taxable year in which the taxpayer does not actively participate (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in such activity;

(C) Low-income housing and rehabilitation investment credits from a rental real estate activity (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T); and

(D) Any credit that is subject to the limitations of sections 26(a), 28(d)(2), 29(b)(5), or 38(c) in a manner that differs from the manner in which any other credit is subject to such limitations.

(4) *Carryover of disallowed deductions and credits.* Any deduction or credit from an activity of the taxpayer that is disallowed for a taxable year under paragraph (f)(2) or (3) of this section, respectively, shall be treated for purposes of section 469 and the regulations thereunder as a deduction or credit, as the case may be, from such activity for the taxpayer's immediately succeeding taxable year. The following example illustrates the application of this pragraph(f)(4):

Example. The facts are the same as in example (1) in paragraph(f)(2)(i)(D) of this section. The $7,560 of loss from activity A and the $13,440 of loss from activity B that are disallowed for the taxable year under paragraph (f)(2) of this section are allocated among the passive activity deductions from those activities for such year under paragraph (f)(2)(ii) of this section and are treated under this paragraph (f)(4) as deductions from activities A and B, respectively, for the succeeding taxable year.

(g) *Application of these rules to C corporations*—(1) *In general.* Except as otherwise provided in the rules to be contained in paragraph (k) of this section, section 469 and the regulations thereunder do not apply to any corporation that is not a personal service corporation or a closely held corporation for the taxable year. See paragraphs (g) (4) and (5) of this section for special rules for computing the passive activity loss and passive activity credit, respectively, of a closely held corporation.

(2) *Definitions.* For purposes of section 469 and the regulations thereunder—

(i) The term "personal service corporation" means a C corporation that is a personal service corporation for the taxable year (within the meaning of § 1.441–4T(d)); and

(ii) The term "closely held corporation" means a C corporation that meets the stock ownership requirements of section 542(a)(2) (taking into account the modifications in section 465(a)(3)) for the taxable year and is not a personal service corporation for such year.

(3) *Participation of corporations*—(i) *Material participation.* For purposes of section 469 and the regulations thereunder, a corporation described in paragraph (g)(2) of this section shall be treated as materially participating in an activity for a taxable year if and only if—

(A) One or more individuals, each of whom is treated under paragraph (g)(3)(iii) of this section as materially participating in such activity for the taxable year, directly or indirectly hold (in the aggregate) more than 50 percent (by value) of the outstanding stock of such corporation; or

(B) In the case of a closely held corporation (within the meaning of paragraph (g)(2)(ii) of this section), the requirements of section 465(c)(7)(C) (without regard to clause (iv) thereof and taking into account section 465(c)(7)(D)) are met with respect to such activity.

(ii) *Significant participation.* For purposes of § 1.469–2T(f)(2), an activity of a corporation described in paragraph (g)(2) of this section shall be treated as a significant participation passive activity for a taxable year if and only if—

(A) The corporation is not treated as materially participating in such activity for the taxable year; and

(B) One or more individuals, each of whom is treated under paragraph (g)(3)(iii) of this section as significantly participating in such activity, directly or indirectly hold (in the aggregate) more than 50 percent (by value) of the outstanding stock of such corporation.

(iii) *Participation of individual.* Whether an individual is treated for purposes of this paragraph (g)(3) as materially participating or significantly participating in an activity of a corporation shall be determined under the rules of § 1.469–5T, except that in applying such rules—

(A) All activities of the corporation shall be treated as activities in which the individual holds an interest in determining whether the individual

participates (within the meaning of § 1.469–5T(f)) in an activity of the corporation; and

(B) The individual's participation in all activities other than activities of the corporation shall be disregarded in determining whether the individual's participation in an activity of the corporation is treated as material participation under § 1.469–5T(a)(4) (relating to material participation in significant participation activities).

(4) *Modified computation of passive activity loss in the case of closely held corporations.*—(i) *In general.* A closely held corporation's passive activity loss for the taxable year is the amount, if any, by which the corporation's passive activity deductions for the taxable year (within the meaning of § 1.469–2T(d)) exceed the sum of—

(A) The corporation's passive activity gross income for the taxable year (within the meaning of § 1.469–2T(c)); and

(B) The corporation's net active income for the taxable year.

(ii) *Net active income.* For purposes of this paragraph (g)(4), a corporation's net active income for the taxable year is such corporation's taxable income for the taxable year, determined without regard to the following items for the year:

(A) Passive activity gross income;

(B) Passive activity deductions;

(C) Portfolio income (within the meaning of § 1.469–2T(c)(3)(i)), including any gross income that is treated as portfolio income under any other provision of the regulations (see, e.g., § 1.469–2T(c)(2)(iii)(E) (relating to gain from the disposition of substantially appreciated property formerly held for investment) and § 1.469–2T(f)(10) (relating to certain recharacterized passive activity gross income);

(D) Gross income that is treated under § 1.469–2T(c)(6) (relating to gross income from certain oil or gas properties) as not from a passive activity;

(E) Gross income and deductions from any trade or business activity (within the meaning of paragraph (e)(2) of this section) that is described in paragraph (e)(6) of this section (relating to certain activities of trading personal property) but only if the corporation did not materially participate in such activity for the taxable year;

(F) Deductions described in § 1.469–2T(d)(2)(i), (ii), and (iv) (relating to certain deductions attributable to portfolio income); and

(G) Interest expense allocated under § 1.163–8T to a portfolio expenditure (within the meaning of § 1.163–8T(b)(6)).

(iii) *Examples.* The following examples illustrate the application of this paragraph (g)(4):

Example (1). (i) For 1987, X, a closely held corporation, is engaged in two activities, a trade or business activity in which X materially participates for 1987 and a rental activity. X also holds portfolio investments. For 1987, X has the following gross income and deductions:

Gross income:	
Rents	$60,000
Gross income from business	100,000
Portfolio income	35,000
Total	$195,000
Deductions:	
Rental deductions	($100,000)
Business deductions (80,000)	
Interest expense allocable to portfolio expenditures under § 1.163–8T	(10,000)
Deductions (other than interest expense) clearly and directly allocable to portfolio income	(5,000)
Total	($195,000)

(ii) The corporation's net active income for 1987 is $20,000, computed as follows:

Gross income		$195,000	
Amounts not taken into account in computing net active income:			
Rents (see paragraph (g)(4)(ii)(A) of this section)	$60,000		
Portfolio income (see paragraph (g)(4)(ii)(C) of this section)	$35,000		
	$95,000	($95,000)	
Gross income taken into account in computing net active income		$100,000	$100,000
Deductions		($195,000)	
Amounts not taken into account in computing net active income:			
Rental deductions (see paragraph (g)(4)(ii)(B) of this section)	($100,000)		
Interest expense allocated to portfolio expenditures (see paragraph (g)(4)(ii)(G) of this section)	($10,000)		
Other deductions clearly and directly allocable to portfolio income (see paragraph (g)(4)(ii)(F) of this section)	($5,000)		
	($115,000)	$115,000	
Deductions taken into account in computing net active income		($80,000)	($80,000)
Net active income			$20,000

(iii) Under paragraph(g)(4)(i) of this section, X's passive activity loss for 1987 is $20,000, the amount by which the passive activity deductions for the taxable year ($100,000) exceed the sum of (a) the passive activity gross income for the taxable year ($60,000) and (b) the net active income for the taxable year ($20,000). Under paragraph (f)(4) of this section, the $20,000 of deductions from X's rental activity that are disallowed for 1987 are treated as deductions from the rental activity for 1988. If computed without regard to the net active income for the taxable year, X's passive activity loss would be $40,000 ($100,000 of rental deductions minus $60,000 of rental income). Thus, the effect of the rule in paragraph (g)(4)(i) of this section is to reduce the corporation's passive activity loss for the taxable year by the amount of the corporation's net active income for such year.

(iv) Under these facts, X's taxable income for 1987 is $20,000, computed as follows:

Gross income		$195,000
Deductions:		
Total deductions	($195,000)	
Passive activity loss	$20,000	

Allowable deductions	($175,000)	($175,000)
Taxable income		$20,000

Example (2). (i) The facts are the same as in example (1), except that, in 1988, X has a loss from the trade or business activity, and a net operating loss ("NOL") of $15,000 that is carried back under section 172(b) to 1987. Since NOL carrybacks are taken into account in computing net active income, X's net active income for 1987 must be recomputed as follows:

Net active income before NOL carryback	$20,000
NOL carryback	($15,000)
Net active income	$5,000

(ii) Under these facts, X's disallowed passive activity loss for 1987 is $35,000, the amount by which the passive activity deductions for the taxable year ($100,000) exceed the sum of (a) the passive activity gross income for the taxable year ($60,000) and (b) the net active income for the taxable year ($5,000).

(iii) Under paragraph (f)(4) of this section, the $35,000 of deductions from X's rental activity that are disallowed for 1987 are treated as deductions from the rental activity for 1988. X's taxable income for 1987 is $20,000, computed as follows:

Gross income		$195,000
Deductions:		
Total deductions	($210,000	
Passive activity loss	$35,000	
Allowable deductions	($175,000)	($175,000)
Taxable income		$20,000

Thus, taking the NOL carryback into account in computing net active income for 1987 does not affect X's taxable income for 1987, but increases the deductions treated under paragraph (f)(4) as deductions from X's rental activity for 1988 and decreases X's NOL carryover to years other than 1987.

(5) *Allowance of passive activity credit of closely held corporations to extent of net active income tax liability*—(i) *In general.* Solely for purposes of determining the amount disallowed under paragraph (a)(1)(ii) of this section, a closely held corporation's passive activity credit for the taxable year shall be reduced by such corporation's net active income tax liability for such year.

(ii) *Net active income tax liability.* For purposes of paragraph (g)(5)(i) of this section, a corporation's net active income tax liability for a taxable year is the amount (if any) by which—

(A) The corporation's regular tax liability (within the meaning of section 26(b)) for the taxable year, determined by reducing the corporation's taxable income for such year by an amount equal to the excess (if any) of the corporation's passive activity gross income for such year over the corporation's passive activity deductions for such year; exceeds

(B) The sum of—

(*1*) The corporation's regular tax liability for the taxable year, determined by reducing the corporation's taxable income for such year by an amount equal to the excess (if any) of the sum of the corporation's net active income (within the meaning of paragraph (g)(4)(ii) of this section) and passive activity gross income for such year over the corporation's passive activity deductions for such year; and

(*2*) The corporation's credits (other than credits from passive activities) that are allowable for the taxable year (without regard to the limitations contained in sections 26(a), 28(d)(2), 29(b)(5), 38(c), and 469).

(h) *Special rules for affiliated group filing consolidated return*—(1) *In general.* For purposes of computing the consolidated taxable income and tax liability of an affiliated group of corporations filing a consolidated return for the taxable year, and the separate taxable income (within the meaning of § 1.1502–12) of each member of such group, section 469 and the regulations thereunder shall be applied in the manner provided in this paragraph (h).

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

(i) The terms "group," "member," "subsidiary," and "consolidated return year" shall have the meanings set forth in § 1.1502–1;

(ii) The term "consolidated group" means a group filing a consolidated return for the taxable year; and

(iii) The term "consolidated taxable income" shall have the meaning set forth in § 1.1502–11.

(3) *Disallowance of consolidated group's passive activity loss or credit.* A consolidated group's passive activity loss or passive activity credit for the taxable year shall be disallowed to the extent provided in paragraph (a) of this section. For purposes of the preceding sentence, a consolidated group's passive activity loss and passive activity credit shall be determined by taking into account the following items of each member of such group:

(i) Passive activity gross income;

(ii) Passive activity deductions;

(iii) Net active income (in the case of a consolidated group treated as a closely held corporation under paragraph (h)(4)(ii) of this section); and

(iv) Credits from passive activities.

(4) *Status and material participation of members*—(i) *Determination by reference to status and participation of group.* For purposes of section 469 and the regulations thereunder—

(A) Each member of a consolidated group shall be treated as a closely held corporation or personal service corporation, respectively, for the taxable year, if and only if the consolidated group is treated (under the rules of paragraph (h)(4)(ii) of this section) as a closely held corporation or personal service corporation for such year; and

(B) The determination of whether a trade or business activity (within the meaning of paragraph (e)(2) of this section) conducted by one or more members of a consolidated group is a passive activity of such members shall be made by reference to the consolidated group's participation in such activity.

(ii) *Determination of status and material participation of consolidated group.* For purposes of determining under paragraph (g)(2) of this section whether a consolidated group is treated as a closely held corporation or a personal service corporation, and determining under paragraph (g)(3) of this section whether the consolidated group materially participates in any activity conducted by one or more members of such group—

(A) The members of such consolidated group shall be treated as one corporation;

(B) Only the outstanding stock of the common parent shall be treated as outstanding stock of such corporation;

(C) An employee of any member of such group shall be treated as an employee of such corporation; and

(D) An activity is treated as the principal activity of such corporation if and only if it is the principal activity (within the meaning of § 1.44–4T(f)) of the consolidated group.

(5) *Modification of rules for identifying disallowed passive activity deductions and credits*—(i) *Identification of disallowed deductions.* In applying paragraphs (f) (2) and (4) of this section to a consolidated group for purposes of identifying the passive

activity deductions of such consolidated group and of each member of such consolidated group that are disallowed for the taxable year and treated as deductions from activities for the succeeding taxable year, the following rules shall apply:

(A) A ratable portion (within the meaning of paragraph (h)(5)(ii) of this section) of the passive activity loss of the consolidated group that is disallowed for the taxable year shall be allocated to each member of the group;

(B) Pararaph (f)(2) of this section shall then be applied to each member of the group as if—

(*1*) Such member were a separate taxpayer; and

(*2*) The amount allocated to such member under paragraph (h)(5)(i)(A) of this section were the amount of such member's passive activity loss that is disallowed for the taxable year; and

(C) Paragraph (f)(4) of this section shall be applied to each member of the group as if it were a separate taxpayer.

(ii) *Ratable portion of disallowed passive activity loss.* For purposes of paragraph (h)(5)(i)(A) of this section, a member's ratable portion of the disallowed passive activity loss of the consolidated group is the amount of such disallowed loss multiplied by the fraction obtained by dividing—

(A) The amount of the passive activity loss of such member of the consolidated group that would be disallowed for the taxable year if the items of gross income and deduction of such member were the only items of the group for such year; by

(B) The sum of the amounts described in paragraph (h)(5)(ii)(A) of this section for all members of the group.

(iii) *Identification of disallowed credits.* In applying paragraph (f)(3) of this section to a consolidated group for purposes of identifying the credits from passive activities of members of such consolidated group that are disallowed for the taxable year, the consolidated group shall be treated as one taxpayer. Thus, a ratable portion of each of the group's credits from passive activities is disallowed.

(6) *Transactions between members of a consolidated group*—(i) *Scope.* This paragraph (h)(6) provides rules regarding the treatment, for purposes of section 469 and the regulations thereunder, of items of income and deduction attributable to intercompany transactions. See paragraph (h)(6)(iv) of this section for the definition of "intercompany transaction" and certain other terms used in this paragraph (h)(6).

(ii) *Recharacterization of gain or loss from intercompany transactions other than deferred intercompany transactions*—(A) *In general.* If the selling member in an intercompany transaction (other than a deferred intercompany transaction) recognizes an item of gain or loss described in § 1.1502–13(b) that is directly related to an item of deduction of the purchasing member, and both the gain or loss and the directly related item of deduction are taken into account in computing consolidated taxable income for the same taxable year, the items of income or deduction that are taken into account by the selling member in computing such gain or loss shall be taken into account in computing consolidated taxable income for such taxable year as items of income or deduction of the selling member from the activity to which the directly related deduction of the purchasing member is attributable.

(B) *Recharacterization of gain or loss as portfolio items.* Any item of income or deduction of a selling member that is recharacterized under this paragraph (h)(6)(ii) shall be treated as an item of income or deduction described in § 1.469–2T(c)(3)(i) (relating to portfolio income) or § 1.469–2T(d)(2)(i) (relating to expenses clearly and directly allocable to portfolio income), as the case may be, if and only if the directly related item of deduction is a deduction described in § 1.469–2T (d)(2)(i) or a deduction for interest expense that is allocated under § 1.163–8T to a portfolio expenditure (within the meaning of § 1.163–8T (b)(6)).

(iii) *Deferred intercompany transactions*—(A) *In general.* For purposes of section 469 and the regulations thereunder, the treatment of deferred gain or loss on a deferred intercompany transaction between members of a group shall be determined in accordance with this paragraph (h)(6)(iii).

(B) *Deferred intercompany transactions involving property subject to depreciation, amortization, or depletion.* If, for any consolidated return year, the selling member in a deferred intercompany transaction is required to take into account deferred gain or loss under § 1.1502–13(d) as a result of depreciation, amortization, or depletion of a member of the group, then for purposes of section 469 and the regulations thereunder such deferred gain or loss shall be taken into account for such year as gain or loss of the selling member from the activity (or activities) to which such depreciation, amortization, or depletion deductions are attributable.

(C) *Restoration of deferred gain or loss on dispositions.* If, for any consolidated return year, the selling member in a deferred intercompany transaction (other than a deferred intercomapny transaction described in § 1.1502–13(e)(1)) is required to take deferred gain or loss into account under § 1.1502–13(e)(2) or (f), then for purposes of section 469 and the regulations thereunder—

(*1*) Such deferred gain or loss shall be treated as gain or loss of the selling member from a disposition of the property involved in such deferred intercompany transaction at the time of (*i*) the event that requires such gain or loss to be taken into account or (*ii*) in the case of a transaction described in § 1.1502–13(e)(2), the disposition of such property outside the consolidated group; and

(*2*) Such deferred gain or loss shall, except as otherwise provided in § 1.1502–2T (c)(2) or (d)(5), be taken into account for such year as gain or loss of the selling member from the activity (or activities) of the affiliated group in which the property involved in such deferred intercompany transaction is used immediately preceding the time specified in paragraph (h)(6)(iii)(C)(*1*) of this section.

See paragraph (h)(8) of this section, relating to dispositions by a member of substantially appreciated property formerly used in a nonpassive activity.

(D) *Certain recharacterized items treated as portfolio items.* Any deferred gain or loss or a selling member that is recharacterized under this paragraph (h)(6)(iii) shall be treated as an item of income or deduction described in § 1.469–2T(c)(3)(i) (relating to portfolio income) or § 1.469–2T(d)(2)(i) (relating to expenses clearly and directly allocable to portfolio income), as the case may be, if and only if the property involved in the transaction is property that produces portfolio income (within the meaning of § 1.469–2T(c)(3)((i)).

(E) *Property involved in deferred intercompany transaction.* For purposes of this paragraph (h)(6)(iii), the property involved in a deferred intercompany transaction is the property sold or exchanged in such transaction or the property with respect to which expenditures incurred in such transaction are capitalized.

(iv) *Definitions.* For purposes of this paragraph (h)(6), the terms set forth below shall have the following meanings:

(A) *Deferred intercompany transaction.* The term "deferred intercompany transaction" shall have the meaning set forth in § 1.1502–13(a)(2).

(B) *Directly related.* An item of gross income and an item of deduction are "directly related" if and to the extent that the same amount paid or accrued generates both the income and the

deduction, without regard to whether the income and the deduction are taken into account by the taxpayer in the same taxable year.

(C) *Intercompany transaction.* The term "intercompany transaction" shall have the meaning set forth in § 1.1502–13(a)(1).

(D) *Purchasing member.* The term "purchasing member" shall have the meaning set forth in § 1.1502–13(a).

(E) *Selling member.* The term "selling member" shall have the meaning set forth in § 1.502–13(a).

(7) *Disposition of stock of a member of an affiliated group.* Any gain recognized by a member on the disposition of stock of a subsidiary (including income resulting from the recognition of an excess loss account under § 1.1502–19 (a)) shall be treated as portfolio income (within the meaning of § 1.469–2T (c)(3)(i)).

(8) *Dispositions of property used in multiple activities.* The determination of whether § 1.469–2T(c)(2)(ii) or (iii) or (d)(5)(ii) applies to a disposition (including a deemed disposition described in paragraph (h)(6)(iii)(C)(*1*) of this section) of property by a member of a consolidated group shall be made by treating such member as having held the property for the entire period that the group has owned such property and as having used the property in all of the activities in which the group has used such property

(i) [Reserved]

(j) *Spouses filing joint return*—(1) *In general.* Except as otherwise provided in the regulations under section 469, spouses filing a joint return for a taxable year shall be treated for such year as one taxpayer for purposes of section 469 and the regulations thereunder Thus, for example, spouses filing a joint return are treated as one taxpayer for purposes of—

(i) Section 1.469–2T (relating generally to the computation of such taxpayer's passive activity loss); and

(ii) Paragraph (f) of this section (relating to the allocation of such taxpayer's disallowed passive activity loss and passive activity credit among activities and the identification of disallowed passive activity deductions and credits from passive activities).

(2) *Exceptions to treatment as one taxpayer*—(i) *Identification of disallowed deductions and credits.* For purposes of paragraphs (f)(2)(iii) and (3)(iii) of this section, spouses filing a joint return for the taxable year must account separately for the deductions and credits attributable to the interests of each spouse in any activity.

(ii) *Treatment of deductions disallowed under sections 704(d), 1366(d), and 465.* Notwithstanding any other provision of this section or § 1.469–2T, this paragraph (j) shall not affect the application of section 704(d), section 1366(d), or section 465 to taxpayers filing a joint return for the taxable year.

(iii) *Treatment of losses from working interests.* Paragraph (e)(4) of this section (relating to losses and credits from certain interests in oil and gas wells) shall be applied by treating a husband and wife (whether or not filing a joint return) as separate taxpayers.

(3) *Joint return no longer filed.* If an individual—

(A) Does not file a joint return for the taxable years; and

(B) Filed a joint return for the immediately preceding taxable year; then the passive activity deductions and credits allocable to such individual's activities for the taxable year under paragraph (f)(4) of this section shall be determined by taking into account the items of deduction and credit attributable to such individual's interests in passive activities for the immediately preceding taxable year. See paragraph (j)(2)(i) of this section.

(4) *Participation of spouses.* Rules treating an individual's participation in an activity as participation of such individual's spouse in such activity (without regard to whether the spouses file a joint return) are contained in § 1.469–5T(f)(3).

(k) *Former passive activities and changes in status of corporations.* [Reserved]

§ 1.469–2T Passive activity loss (temporary).

(a) *Scope of this section.* This section contains rules for determining the amount of the taxpayer's passive activity loss for the taxable year for purposes of section 469 and the regulations thereunder. The rules contained in this section—

(1) Provide general guidance for identifying items of income and deduction that are taken into account in determining the amount of the passive activity loss for the taxable year;

(2) Specify particular items of income and deduction that are not taken into account in determining the amount of the passive activity loss for the taxable year; and

(3) Specify the manner in which provisions of the Internal Revenue Code and the regulations, other than section 469 and the regulations thereunder, are applied for purposes of determining the extent to which items of deduction are taken into account for a taxable year in computing the amount of the passive activity loss for such year.

(b) *Definition of passive activity loss*—(1) *In general.* In the case of a taxpayer other than a closely held corporation (within the meaning of § 1.469–1T(g)(2)(ii)), the passive activity loss for the taxable year is the amount, if any, by which the passive activity deductions for the taxable year exceed the passive activity gross income for the taxable year.

(2) *Cross references.* See paragraph (c) of this section for the definition of "passive activity gross income," paragraph (d) of this section for the definition of "passive activity deduction," and § 1.469–1T(g)(4) for the computation of the passive activity loss of a closely held corporation.

(c) *Passive activity gross income*—(1) *In general.* Except as otherwise provided in the regulations under section 469, passive activity gross income for a taxable year includes an item of gross income if and only if such income is from a passive activity.

(2) *Treatment of gain from disposition of an interest in an activity or an interest in property used in an activity*—(i) *In general*—(A) *Treatment of gain.* Except as otherwise provided in the regulations under section 469, any gain recognized upon the sale, exchange or other disposition (a "disposition") of an interest in property used in an activity at the time of the disposition or of an interest in an activity held through a partnership or S corporation is treated in the following manner:

(*1*) The gain is treated as gross income from such activity for the taxable year or years in which it is recognized;

(*2*) If the activity is a passive activity of the taxpayer for the taxable year of the disposition, the gain is treated as passive activity gross income for the taxable year or years in which it is recognized; and

(*3*) If the activity is not a passive activity of the taxpayer for the taxable year of the disposition, the gain is treated as not from a passive activity.

(B) *Dispositions of partnership interests and S corporation stock.* A partnership interest or S corporation stock is not property used in an activity for purposes of this paragraph (c)(2). See paragraph (e)(3) of this section for rules treating the gain recognized upon the disposition of a partnership interest or S corporation stock as gain from the disposition of interests in the activities in which the partnership or S corporation has an interest.

(C) *Interest in property.* For purposes of applying this paragraph (c)(2) to a disposition of property—

(*1*) Any material portion of the property that was used, at any time

before the disposition, in any activity at a time when the remainder of the property was not used in such activity shall be treated as a separate interest in property; and

(2) The amount realized from the disposition and the adjusted basis of the property must be allocated among the separate interests in a reasonable manner.

(D) *Examples.* The following examples illustrate the application of this paragraph (c)(2)(i):

Example (1). A owns an interest in a trade or business activity in which A has never materially partcipated. In 1987, A sells equipment that was used exclusively in the activity and realizes a gain on the sale. Under paragraph (c)(2)(i)(A)(2) of this section, the gain is passive activity gross income.

Example (2). B owns an interest in a trade or business activity in which B materially participates for 1987. In 1987, B sells a building used in the activity in an installment sale and realizes a gain on the sale. B does not materially participate in the activity for 1988 or any subsequent year. Under paragraph (c)(2)(i)(A)(3) of this section, none of B's gain from the sale (including gain taken into account after 1987) is passive activity gross income.

Example (3). C enters into a contract to acquire property used by the seller in a rental activity. Before acquiring the property pursuant to the contract, C sells all rights under the contract and realizes a gain on the sale. Since C's rights under the contract are not property used in a rental activity, the gain is not income from a rental activity. The result would be the same if C owned an option to acquire the property and sold the option.

Example (4). D sells a ten-floor office building. D owned the building for three years preceding the sale and at all times during that period used seven floors of the building in a trade or business activity and three floors in a rental activity. The fair market value per square foot is substantially the same throughout the building, and D did not maintain a separate adjusted basis for any part of the building. Under paragraph (c)(2)(i)(C)(1) of this section, the seven floors used in the trade or business activity and the three floors used in the rental activity are treated as separate interests in property. Under paragraph (c)(2)(i)(C)(2) of this section, the amount realized and the adjusted basis of the building must be allocated between the separate interests in a reasonable manner. Under these facts, an allocation based on the square footage of the parts of the building used in each activity would be reasonable.

Example (5). The facts are the same as in example (4), except that two of the seven floors used in the trade or business activity were used in the rental activity until five months before the sale. Under paragraph (c)(2)(i)(C)(1) of this section, the five floors used exclusively in the trade or business activity and the two floors used first in the rental activity and then in the trade or business activity are treated as separate interests in property See paragraph (c)(2)(ii) of this section for rules for allocating amount realized and adjusted basis upon a disposition of an interest in property used in more than one activity during the 12-month period ending on the date of the disposition.

(ii) *Disposition of property used in more than one activity in 12-month period preceding disposition.* In the case of a disposition of an interest in property that is used in more than one activity during the 12-month period ending on the date of the disposition, the amount realized from the disposition and the adjusted basis of such interest must be allocated among such activities on a basis that reasonably reflects the use of such interest in property during such 12-month period. For purposes of this paragraph (c)(2)(ii), an allocation of the amount realized and adjusted basis solely to the activity in which an iterest in property is predominantly used during the 12-month period ending on the date of the disposition reasonably reflects the use of such interest in property if the fair market value of such interest does not exceed the lesser of—

(A) $10,000; and

(B) 10 percent of the sum of the fair market value of such interest and the fair market value of all other property used in such activity immediately before the disposition.

The following examples illustrate the application of this paragraph (c)(2)(ii):

Example (1). The facts are the same as in example (5) of paragraph (c)(2)(i)(D) of this section. Under paragraph (c)(2)(i)(C)(2) of this section, D allocates the amount realized and adjusted basis of the building 30 percent to the three floors used exclusively in the rental activity, 50 percent to the five floors used exclusively in the trade or business activity, and 20 percent to the two floors used first in the rental activity and then in the trade or business activity. Under this paragraph (c)(2)(ii), the amount realized and adjusted basis allocated to the two floors that were used in both activities during the 12-month period ending on the date of the disposition must also be allocated between such activities. Under these facts, an allocation of 7/12 of such amounts to the rental activity and 5/12 of such amounts to the trade or business activity would reasonably reflect the use of the two floors during the 12-month period ending on the date of the disposition.

Example (2). B is a limited partner in a partnership that sells a tractor-trailer. During the 12-month period ending on the date of the sale, the tractor-trailer was used in several activities, and the partnership allocates the amount realized from the disposition and the adjusted basis of the tractor-trailer among the activities based on the number of days during the 12-month period that the partnership used the tractor-trailer in each activity. Under these facts, the partnership's allocation reasonably reflects the use of the tractor-trailer during the 12-month period ending on the date of the sale.

Example (3). C sells a personal computer for $8,000. During the 12-month period ending on the date of the sale, 70 percent of C's use of the computer was in a passive activity. Immediately before the sale, the fair market value of all property used in the passive activity (including the personal computer) was $200,000. Under these facts, the computer was predominatly used in the passive activity during the 12-month period ending on the date of the sale, and the value of the computer, as measured by its sale price ($8,000), does not exceed the lesser of (a) $10,000, and (b) 10 percent of the value of all property used in the activity immediately before the sale ($20,000). C allocates the amount realized and the adjusted basis solely to the passive activity. Under this paragraph (c)(2)(ii), C's allocation reasonably reflects the use of the computer during the 12-month period ending on the date of the sale.

(iii) *Disposition of substantially appreciated property formerly used in nonpassive activity*—(A) *In general.* If an interest in property used in an activity is substantially appreciated at the time of its disposition, any gain from the disposition shall be treated as not from a passive activity unless such interest in property was used in a passive activity for either—

(1) 20 percent of the period during which the taxpayer held such interest in property; or

(2) The entire 24-month period ending on the date of the disposition.

(B) *Date of disposition.* For purposes of this paragraph (c)(2)(iii), a disposition of an interest in property shall be deemed to occur on the date that such interest in property becomes subject to an oral or written agreement that either requires the owner or gives the owner an option to transfer such interest in property for consideration that is fixed or otherwise determinable on such date.

(C) *Substantially appreciated property.* For purposes of this paragraph (c)(2)(iii), an interest in property is substantially appreciated if the fair market value of such interest in property exceeds 120 percent of the adjusted basis of such interest.

(D) *Coordination with paragraph (c)(2)(ii) of this section.* If paragraph (c)(2)(ii) of this section applies to the disposition of an interest in property, this paragraph (c)(2)(iii) shall apply only to that portion of the gain from the disposition of such interest in property that is characterized as gain from a passive activity after the application of paragraph (c)(2)(ii) of this section.

(E) *Coordination with section 163(d).* Gain that is treated as not from a passive activity under this paragraph (c)(2)(iii) shall be treated as income described in section 469(e)(1)(A) and paragraph (c)(3)(i) of this section if and

only if such gain is from the disposition of an interest in property that was held for investment for more than 50 percent of the period during which the taxpayer held such interest in property in activities other than passive activities.

(F) *Example.* The following example illustrates the application of this paragraph (c)(2)(iii):

Example. A acquires a building on January 1, 1987, and uses the building in a trade or business activity in which A materially participates until March 31, 1997. On April 1, 1998, A leases the building to B. On December 31, 1999, A sells the building. Assuming A's lease of the building to B constitutes a rental activity (within the meaning of § 1.469–1T(e)(3)), the building is used in a passive activity for 21 months (April 1, 1998, through December 31, 1999). Thus, the building was not used in a passive activity for the entire 24-month period ending on the date of the sale. In addition, the 21-month period during which the building was used in a passive activity is less than 20 percent of A's holding period for the property (13 years). Therefore, the gain from the sale is treated under this paragraph (c)(2)(iii) as not from a pasive activity.

(3) *Items of portfolio income specifically excluded*—(i) *In general.* Passive activity gross income does not include portfolio income. For purposes of the preceding sentence, portfolio income includes all gross income, other than income derived in the ordinary course of a trade or business (within the meaning of paragraph (c)(3)(ii) of this section), that is attributable to—

(A) Interest (including amounts treated as interest under paragraph (e)(2)(ii) of this section, relating to certain payments to partners for the use of capital); annuities; royalties (including fees and other payments for the use of intangible property); dividends on C corporation stock; and income (including dividends) from a real estate investment trust (within the meaning of section 856), regulated investment company (within the meaning of section 851), real estate mortgage investment conduit (within the meaning of section 860D), common trust fund (within the meaning of section 584), controlled foreign corporation (within the meaning of section 957), qualified electing fund (within the meaning of section 1295(a)), or cooperative (within the meaning of section 1381(a));

(B) Dividends on S corporation stock (within the meaning of section 1368(c)(2);

(C) The disposition of property that produces income of a type described in paragraph (c)(3)(i)(A) of this section; and

(D) The disposition of property held for investment (within the meaning of section 163 (d)).

(ii) *Gross income derived in the ordinary course of a trade or business.* Solely for purposes of paragraph (c)(3)(i) of this section, gross income derived in the ordinary course of a trade or business includes only—

(A) Interest income on loans and investments made in the ordinary course of a trade or business of lending money;

(B) Interest on accounts receivable arising from the performance of services or the sale of property in the ordinary course of a trade or business of performing such services or selling such property, but only if credit is customarily offered to customers of the business;

(C) Income from investments made in the ordinary course of a trade or business of furnishing insurance or annuity contracts or reinsuring risks underwritten by insurance companies;

(D) Income or gain derived in the ordinary course of an activity of trading or dealing in any property if such activity constitutes a trade or business (but see paragraph (c)(3)(iii)(A) of this section);

(E) Royalties derived by the taxpayer in the ordinary course of a trade or business of licensing intangible property (within the meaning of paragraph (c)(3)(iii)(B) of this section);

(F) Amount included in the gross income of a patron of a cooperative (within the meaning of section 1381(a), without regard to paragraph (2)(A) or (C) thereof) by reason of any payment or allocation to the patron based on patronage occurring with respect to a trade or business of the patron; and

(G) Other income identified by the Commissioner as income derived by the taxpayer in the ordinary course of a trade or business.

(iii) *Special rules*—(A) *Income from property held for investment by dealer.* For purposes of paragraph (c)(3)(i) of this section, a dealer's income or gain from an item of property is not dervied by the dealer in the ordinary course of a trade or business of dealing in such property if the dealer held the property for investment at any time before such income or gain is recognized.

(B) *Royalties derived in the ordinary course of the trade or business of licensing intangible property*—(*1*) *In general.* Royalties received by any person with respect to a license or other transfer of any rights in intangible property shall be considered to be derived in the ordinary course of the trade or business of licensing such property only if such person—

(*i*) Created such property; or

(*ii*) Performed substantial services or incurred substantial costs with respect to the development or marketing of such property.

(*2*) *Substantial services or costs*—(*i*) *In general.* Except as provided in paragraph (c)(3)(iii)(B)(*2*)(*ii*) of this section, the determination of whether a person has performed substantial services or incurred substantial costs with respect to the development or marketing of an item of intangible property shall be made on the basis of all the facts and circumstances.

(*ii*) *Exception.* A person has performed substantial services or incurred substantial costs for a taxable year with respect to the development or marketing of an item of intangible property if—

(*a*) The expenditures reasonably incurred by such person in such taxable year with respect to the development or marketing of the property exceed 50 percent of the gross royalties from licensing such property that are includible in such person's gross income for the taxable year; or

(*b*) The expenditures reasonably incurred by such person in such taxable year and all prior taxable years with respect to the development or marketing of the property exceed 25 percent of the aggregate capital expenditures (without any adjustment of amortization) made by such person with respect to the property in all such taxable years.

(*iii*) *Expenditures taken into account.* For purposes of paragraph (c)(3)(iii)(B)(*2*)(*ii*) of this section, expenditures in a taxable year include amounts chargeable to capital account for such year without regard to the year or years (if any) in which any deduction for such expenditure is allowed.

(*3*) *Passthrough entities.* For purposes of this paragraph (c)(3)(iii)(B), in the case of any intangible property held by a partnership, S corporation, estate, or trust, the determination of whether royalties from such property are derived in the ordinary course of a trade or business shall be made by applying the rules of this paragraph (c)(3)(iii)(B) to such entity and not to any holder of an interest in such entity.

(*4*) *Cross reference.* For special rules applicable to certain gross income from a trade or business of licensing intangible property, see paragraph (f)(7) of this section.

(C) *Mineral production payments.* For purposes of section 469 and the regulations thereunder—

(*1*) If a mineral production payment is treated as a loan under section 636, the portion of any payment in discharge of the production payment that is the equivalent of interest shall be treated as interest; and

(2) If a mineral production payment is not treated as a loan under section 636, payments in discharge of the production payment shall be treated as royalties.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(3):

Example (1). A, an individual engaged in the trade or business of farming, disposes of farmland in an installment sale. A is not engaged in a trade or business of selling farmland. Therefore, A's interest income from the installment note is not gross income derived in the ordinary course of a trade or business.

Example (2). P, a partnership, operates a rental apartment building for low-income tenants in City Y. Under Y's laws relating to the operation of low-income housing, P is required to maintain a reserve fund to pay for the maintenance and repair of the building. P invests the reserve fund in short-term interest-bearing deposits. Because P's interest income from the investment of the reserve fund is not interest income described in paragraph (c)(3)(ii) of this section, such income is not treated as derived in the ordinary course of a trade or business. Accordingly, P's interest income from the deposits is portfolio income (within the meaning of paragraph (c)(3)(i) of this section).

Example (3). (i) B is a partner in a partnership that is engaged in an activity involving the conduct of a trade or business of dealing in securities. On February 1, the partnership acquires certain securities for investment (within the meaning of section 163(d)). On February 2, before recognizing any income with respect to the securities, the partnership determines that it would be advisable to hold the securities primarily for sale to customers and subsequently sells them to customers in the ordinary course of its business.

(ii) Under paragraph (c)(3)(iii)(A) of this section, income or gain from any security (including any security acquired pursuant to an investment of working capital) held by a dealer for investment at any time before such income or gain is recognized is not treated for purposes of paragraph (c)(3)(i) of this section as derived by the dealer in the ordinary course of its trade or business of dealing in securities. Accordingly, B's distributive share of the partnership's interest, dividends, or gains from the securities acquired by the partnership for investment on February 1 is portfolio income of B, notwithstanding that such securities were held by the partnership, subsequent to February 1, primarily for sale to customers in the ordinary course of the partnership's trade or business of dealing in securities.

Example (4). C is a partner in a partnership that is engaged in an activity of trading or dealing in royalty interests in mineral properties. The partnership derives royalty income from royalty interests held in the activity. If the activity is a trade or business activity, C's distributive share of the partnership's royalty income from such royalty interests is treated under paragraph (c)(3)(ii)(D) of this section as derived in the ordinary course of the partnership's trade or business.

Example (5). (i) D, a calendar year individual, is a partner in a calendar year partnership that is engaged in an activity of developing and marketing a design for a system that reduces air pollution in office buildings. D has a 10 percent distributive share of all items of partnership income, gain, loss, deduction, and credit. In 1987, the partnership acquired the rights to the design for $100,000. In 1987, 1988, and 1989, the partnership incurs expenditures with respect to the development and marketing of the design, and derives gross royalties from licensing the design, in the amounts set forth in the table below. The expenditures incurred in 1987 and 1988 are currently deductible expenses. The expenditures incurred in 1989 are capitalized and may be deducted only in subsequent taxable years.

Year	Gross royalties	Expenditures	Cumulative capital expenditures
1987	$20,000	$8,000	$100,000
1988	20,000	12,000	100,000
1989	60,000	15,000	115,000
1990	120,000	0	115,000

(ii) Under paragraph (c)(3)(iii)(B)(*3*) of this section, the determination of whether royalties from intangible property are derived in the ordinary course of a trade or business of a partnership is made by applying the rules of paragraph (c)(3)(iii)(B) of this section to the partnership rather than the partners. The expenditures reasonably incurred by the partnership in 1987 with respect to the development or marketing of the design ($8,000) do not exceed 50 percent of the partnership's gross royalties for such year from licensing the design ($20,000). In addition, the sum of such expenditures incurred in 1987 and all prior taxable years ($8,000) does not exceed 25 percent of the aggregate capital expenditures made by the partnership in all such taxable years with respect to the design ($100,000). Accordingly, for 1987, the partnership is not treated under paragraph (c)(3)(iii)(B)(*2*)(*ii*) of this section as performing substantial services or incurring substantial costs with respect to the development or marketing of the design. Therefore, unless all of the facts and circumstances indicate that the partnership performed substantial services or incurred substantial costs with respect to the development or marketing of the design, D's distributive share of the partnership's royalty income for 1987 is portfolio income.

(iii) As of the end of 1988, the sum of the expenditures reasonably incurred by the partnership during such taxable year and all prior taxable years with respect to the development or marketing of the design ($20,000) does not exceed 25 percent of the aggregate capital expenditures made by the partnership in all such years with respect to the design ($100,000). However, the amount of such expenditures incurred by the partnership in 1988 ($12,000) exceeds 50 percent of the partnership's gross royalties for such year from licensing the design ($20,000). Accordingly, for 1988, under paragraph (c)(3)(iii)(B)(*2*)(*ii*)(*a*) of this section, the partnership is treated as performing substantial services or incurring substantial costs with respect to the development or marketing of the design, and D's distributive share of the partnership's royalty income for 1988 is considered for purposes of paragraph (c)(3)(i) of this section to be derived in the ordinary course of a trade or business and therefore is not portfolio income.

(iv) The expenditures reasonably incurred by the partnership in 1989 with respect to the development or marketing of the design ($15,000) do not exceed 50 percent of the partnership's gross royalties for such year from licensing the design ($60,000). However, the sum of such expenditures incurred by the partnership in 1989 and all prior taxable years ($35,000) exceeds 25 percent of the partnership's aggregate capital expenditures made in all such years with respect to the design ($115,000). Accordingly, for 1989, under paragraph (c)(3)(iii)(B)(*2*)(*ii*)(*b*) of this section, the partnership is treated as performing substantial services or incurring substantial costs with respect to the development or marketing of the design, and D's distributive share of the partnership's royalty income in 1989 is considered for purposes of paragraph (c)(3)(i) of this section to be derived in the ordinary course of a trade or business and therefore is not portfolio income.

(v) The result for 1990 is the same as for 1989, notwithstanding that the partnership incurs no expenditures in 1990 with respect to the development or marketing of the design.

Example (6). The facts are the same as in example (5), except that, for 1987, D's distributive share of the partnership's development and marketing costs is 15 percent, while D's distributive share of the partnership's gross royalties is 10 percent. Although D's distributive share of the expenditures reasonably incurred by the partnership during 1987 with respect to the development and marketing of the design ($1,200) is more than 50 percent of D's distributive share of the partnership's gross royalties from licensing the design ($2,000), D is not treated as performing substantial services or incurring substantial costs with respect to the development or marketing of the design for 1987 under paragraph (c)(3)(iii)(B)(*2*)(*ii*)(*a*) of this section. This is because, under paragraph (c)(3)(iii)(B)(*3*) of this section, the determination of whether the royalties are derived in the ordinary course of a trade or business is made by applying paragraph (c)(3)(iii)(B) of this section to the partnership, and not to D.

(4) *Items of personal service income specifically excluded*—(i) *In general.* Passive activity gross income does not include compensation paid to or on behalf of an individual for personal services performed or to be performed by such individual at any time. For purposes of this paragraph (c)(4), compensation for personal services includes only—

(A) Earned income (within the meaning of section 911(d)(2)(A)), including gross income from a payment

described in paragraph (e)(2) of this section that represents compensation for the performance of services by a partner;

(B) Amounts includible in gross income under section 83;

(C) Amounts includible in gross income under sections 402 and 403;

(D) Amounts (other than amounts described in paragraph (c)(4)(i)(C) of this section) paid pursuant to retirement, pension, and other arrangements for deferred compensation for services;

(E) Social security benefits (within the meaning of section 86(d)) includible in gross income under section 86; and

(F) Other income identified by the Commissioner as income derived by the taxpayer from personal services;

provided, however, that no portion of a partner's distributive share of partnership income (within the meaning of section 704(b)) or a shareholder's pro rata share of income from an S corporation (within the meaning of section 1377(a)) shall be treated as compensation for personal services.

(ii) *Example.* The following example illustrates the application of this paragraph (c)(4):

Example. C owns 50 percent of the stock of X, an S corporation. X owns rental real estate, which it manages. X pays C a salary for services performed by C on behalf of X in connection with the management of X's rental properties. Under this paragraph (c)(4), although C's pro rata share of X's gross rental income is passive activity gross income (even if the salary paid to C is less than the fair market value of C's services), the salary paid to C does not constitute passive activity gross income.

(5) *Income from section 481 adjustment*—(i) *In general.* If a change in accounting method results in a positive section 481 adjustment with respect to an activity, a ratable portion (within the meaning of paragraph (c)(5)(iii) of this section) of the amount taken into account for a taxable year as a net positive section 481 adjustment by reason of such change shall be treated as gross income from the activity for such taxable year, and such gross income shall be treated as passive activity gross income if and only if such activity is a passive activity for the year of the change (within the meaning of section 481(a)).

(ii) *Positive section 481 adjustments.* For purposes of applying this paragraph (c)(5)—

(A) The term "net positive section 481 adjustment" means the increase (if any) in taxable income taken into account under section 481(a) to prevent amounts from being duplicated or omitted by reason of a change in accounting method; and

(B) The term "positive section 481 adjustment with respect to an activity" means the increase (if any) in taxable income that would be taken into account under section 481(a) to prevent only the duplication or omission of amounts from such activity by reason of the change in accounting method.

(iii) *Ratable portion.* The ratable portion of the amount taken into account as a net positive section 481 adjustment for a taxable year by reason of a change in accounting method is determined with respect to an activity by multiplying such amount by the fraction obtained by dividing—

(A) The positive section 481 adjustment with respect to the activity; by

(B) The sum of the positive section 481 adjustments with respect to all of the activities of the taxpayer.

(6) *Gross income from certain oil or gas properties*—(i) *In general.* Notwithstanding any other provision of the regulations under section 469, passive activity gross income for any taxable year does not include an amount of the taxpayer's gross income for such year from—

(A) An oil or gas property, if any loss from a working interest in such property for any prior taxable year beginning after December 31, 1986, was treated by the taxpayer, solely by reason of § 1.469–1T(e)(4) (relating to a special rule for losses from oil and gas working interests), and not by reason of the taxpayer's material participation in the activity, as a loss that is not from a passive activity; or

(B) Any property the basis of which is determined in whole or in part by reference to the basis of property described in paragraph(c)(6)(i)(A) of this section;

equal to the taxpayer's net income from such property for the taxable year. The preceding sentence applies without regard to whether the taxpayer's interest in the property is held through an entity that limits the taxpayer's liability (within the meaning of § 1.469–1T(e)(4)(v)).

(ii) *Net income from the property.* For purposes of this paragraph (c)(6), the taxpayer's net income for the taxable year from any property described in paragraph (c)(6)(i) of this section is the amount, if any, by which the taxpayer's gross income from such property exceeds the taxpayer's deductions for such taxable year (including any deduction treated as a deduction for such year under § 1.469–1T(f)(4)) that are reasonable allocable to such property.

(iii) *Property.* For purposes of paragraph (c)(6)(i)(A) of this section, the term "property" does not have the meaning given such term by section 614(a) or the regulations thereunder, but means any property the value of which is directly enhanced by any drilling, logging, seismic testing, or other activities any part of the costs of which were borne by the taxpayer as a result of holding the working interest described in such paragraph (c)(6)(i)(A).

(iv) *Examples.* The following examples illustrate the application of this (c)(6):

Example (1). A is a general partner in partnership P and a limited partner in partnership R. P and R own oil and gas working interests in two separate tracts of land acquired from two separate landowners. In 1987, P drills a well on its tract, and A's distributive share of P's losses from drilling the well are treated under § 1.469–1T(e)(4) as not from a passive activity. In the course of selecting the drilling site and drilling the well, P develops information indicating that the reservoir in which the well was drilled underlies R's tract as well as P's. Under these facts, P's and R's tracts are treated as one property for purposes of this paragraph (c)(6), even if A's interests in the mineral deposits in the tracts are treated as separate properties under section 614(a). Accordingly, in 1988 and subsequent years, A's distributive share of both P's and R's income and expenses from their respective tracts is taken into account in computing A's net income from the property for purposes of this paragraph (c)(6).

Example (2). B is a general partner in partnership S. S owns an oil and gas working interest in a single tract of land. In 1987, S drills a well, and B's distributive share of S's losses from drilling the well is treated under § 1.469–1T(e)(4) as not from a passive activity. In the course of drilling the well, S discovers two oil-bearing formations, one underlying the other. On December 1, 1987, S completes the well in the underlying formation. On January 1, 1988, B converts B's entire general partnership interest in S into a limited partnership interest. In 1988, S completes in, and commences production from, the shallow formation. Under these facts, the two mineral deposits in S's tract are treated as one property for purposes of this paragraph (c)(6), even if they are treated as separate properties under section, 614 (a). Accordingly, B's distributive share of S's income and expenses from both the underlying formation and from recompletion in and production from the shallow formation is taken into account in computing B's net income from the property for purposes of this paragraph (c)(6).

Example (3). C is a general partner in partnership T and a limited partner in partnership U. T and U both own oil and gas working interests in tracts of land in County X. In 1987, T drills a well, and C's distributive share of T's losses from drilling the well is treated under § 1.469–1T(e)(4) as not from a passive activity. In the course of selecting the drilling site and drilling the well, T develops information indicating a significant probability that substantial oil and gas

reserves underlie most portions of County X. As a result, the value of all oil and gas properties in County X is enhanced. The information developed by T does not, however, indicate that the reservoir in which T's well is drilled underlies U's tract. Under these facts, T's and U's tracts are not treated as one property for purposes of this paragraph (c)(6), because the value of U's tract is not directly enhanced by T's activities.

(7) *Other items specifically excluded.* Notwithstanding any other provision of the regulations under section 469, passive activity gross income does not include the following:

(i) Gross income of an individual from intangible property, such as a patent, copyright, or literary, musical, or artistic composition, if the taxpayer's personal efforts significantly contributed to the creation of such property;

(ii) Gross income from a qualified low-income housing project (within the meaning of section 502 of the Tax Reform Act of 1986) for any taxable year in the relief period (within the meaning of section 502(b) of such Act;

(iii) Gross income attributable to a refund of any state, local, or foreign income, war profits, or excess profits tax;

(iv) Gross income of an individual from a covenant by such individual not to compete; and

(v) Gross income that is treated as not from a passive activity under any provision of the regulations under section 469, including but not limited to § 1.469–1T(h)(6) (relating to income from intercompany transactions of members of an affiliated group of corporations filing a consolidated return) and paragraph (f) of this section (relating to recharacterized passive income).

(d) *Passive activity deductions*—(1) *In general.* Except as otherwise provided in section 469 and the regulations thereunder, a deduction is a passive activity deduction for a taxable year if and only if such deduction—

(i) Arises (within the meaning of paragraph (d)(8) of this section) in connection with the conduct of a activity that is a passive activity for the taxable year; or

(ii) Is treated as a deduction from an activity under § 1.469–1T(f)(4) for the taxable year.

The following example illustrates the application of this paragraph (d)(1):

Example. (i) In 1987, A, a calendar year individual, acquires a partnership interest in R, a calendar year partnership. R's only activity is a trade or business activity in which A materially participates for 1987. R incurs a loss in 1987. A's distributive share of R's 1987 loss is $1,000. However, A's basis in the partnership interest at the end of 1987 (without regard to A's distributive share of partnership loss) is $600; accordingly, section 704(d) disallows any deduction in 1987 for $400 of A's distributive share of R's loss. The remainder of A's distributive share of R's loss would be allowed as a deduction for 1987 if taxable income for all taxable years were determined without regard to sections 469 and 1211. See paragraph (d)(8) of this section.

(ii) A does not materially participate in R's activity for 1988. In 1988, R again incurs a loss, and A's distributive share of the loss is again $1,000. At the end of 1988, A's basis in the partnership interest (without regard to A's distributive share of partnership loss) is $2,000; accordingly, in 1988 section 704(d) does not limit A's deduction for either A's $1,000 distributive share of R's 1988 loss or the $400 loss carried over from 1987 under the second sentence of section 704(d). These losses would be allowed as a deduction for 1988 if taxable income for all taxable years were determined without regard to sections 469 and 1211. See paragraph (d)(8) of this section.

(iii) Under these facts, only $400 of A's distributive share of R's deductions from the activity are disallowed under section 704(d) in 1987. A's remaining deductions from the activity are treated as deductions that arise in connection with the activity for 1987 under paragraph (d)(8) of this section. Because A materially participates in the activity for 1987, the activity is not a passive activity (within the meaning of § 1.469–1T(e)(1)) of A for such year. Accordingly, the deductions that are not disallowed in 1987 are not passive activity deductions.

(iv) A does not materially participate in R's activity for 1988. Accordingly, the activity is a passive activity of A for such year. No portion of A's distributive share of R's deductions from the activity is disallowed under section 704(d) in 1988. Accordingly, A's distributive share of R's deductions for 1988 and the $400 of deductions carried over from 1987 are both treated under paragraph (d)(8) of this section as deductions that arise in 1988. Since the activity is a passive activity for 1988, such deductions are passive activity deductions.

(2) *Exceptions.* Passive activity deductions do not include—

(i) A deduction for an item of expense (other than interest) that is clearly and directly allocable (within the meaning of paragraph (d)(4) of this section) to portfolio income (within the meaning of paragraph (c)(3)(i) of this section);

(ii) A deduction allowed under section 243, 244, or 245 with respect to any dividend that is not included in passive activity gross income;

(iii) Interest expense (other than interest expense described in paragraph (d)(3) of this section);

(iv) A deduction for a loss from the disposition of property of a type that produces portfolio income (within the meaning of paragraph (c)(3)(i) of this section);

(v) A deduction that, under section 469(g) and § 1.469–6T (relating to the allowance of passive activity losses upon certain dispositions of interests in passive activities), is treated as a deduction that is not a passive activity deduction;

(vi) A deduction for any state, local, or foreign income, war profits, or excess profits tax;

(vii) A miscellaneous itemized deduction (within the meaning of section 67(b)) that is subject to disallowance in whole or in part under section 67(a) (without regard to whether any amount of such deduction is disallowed under section 67);

(viii) A deduction allowed under section 170 for a charitable contribution;

(ix) An item of loss or deduction that is carried to the taxable year under section 172(a), section 1212(a)(1)(B) (in the case of corporations), or section 1212(b) (in the case of taxpayers other than corporations); and

(x) An item of loss or deduction that would have been allowed for a taxable year beginning before January 1, 1987, but for section 704(d), 1366, or 465.

(3) *Interest expense.* Except as otherwise provided in the regulations under section 469, interest expense is taken into account as a passive activity deduction if and only if such interest expense—

(i) Is allocated under § 1.163–8T to a passive activity expenditure (within the meaning of § 1.163–8T(b)(4)); and

(ii) Is not—

(A) Qualified residence interest (within the meaning of § 1.163–10T); or

(B) Capitalized pursuant to a capitalization provision (within the meaning of § 1.163–8T(m)(7)(i)).

(4) *Clearly and directly allocable expenses.* For purposes of section 469 and the regulations thereunder, an expense (other than interest expense) is clearly and directly allocable to portfolio income (within the meaning of paragraph (c)(3)(i) of this section) if and only if such expense is incurred as a result of, or incident to, an activity in which such gross income is derived or in connection with property from which such gross income is derived. For example, general and administrative expenses and compensation paid to officers attributable to the performance of services that do not directly benefit or are not incurred by reason of a particular activity or particular property are not clearly and directly allocable to portfolio income (within the meaning of paragraph (c)(3)(i) of this section).

(5) *Treatment of loss from disposition*—(i) *In general.* Except as otherwise provided in the regulations under section 469—

(A) Any loss recognized in any year upon the sale, exchange, or other

disposition (a "disposition") of an interest in property used in an activity at the time of the disposition or of an interest in an activity held through a partnership or S corporation and any deduction allowed on account of the abandonment or worthlessness of such an interest is treated as a deduction from such activity; and

(B) Any such deduction is a passive activity deduction if and only if the activity is a passive activity of the taxpayer for the taxable year of the disposition (or other event giving rise to the deduction).

(ii) *Disposition of property used in more than one activity in 12-month period preceding disposition.* In the case of a disposition of an interest in property that is used in more than one activity during the 12-month period ending on the date of the disposition, the amount realized from the disposition and the adjusted basis of such interest must be allocated among such activities in the manner described in paragraph (c)(2)(ii) of this section.

(iii) *Other applicable rules*—(A) *Interest in property.* For purposes of this paragraph (d)(5), a taxpayer's interests in property used in an activity and the amounts allocated to such interests shall be determined under paragraph (c)(2)(i)(C) of this section.

(B) *Dispositions of partnership interests and S corporation stock.* A partnership interest or S corporation stock is not property used in an activity for purposes of this paragraph (d)(5). See paragraph (e)(3) of this section for rules treating the loss recognized upon the disposition of a partnership interest or S corporation stock as loss from the disposition of interests in the activities in which the partnership or S corporation has an interest.

(6) *Coordination with other limitations on deductions that apply before section 469*—(i) *In general.* An item of deduction from a passive activity that is disallowed for a taxable year under section 704(d), 1366(d), or 465 is not a passive activity deduction for the taxable year. Paragraphs (d)(6) (ii) and (iii) of this section provide rules for determining the extent to which items of deduction from a passive activity are disallowed for a taxable year under sections 704(d), 1366(d), and 465.

(ii) *Proration of deductions disallowed under basis limitations*—(A) *Deductions disallowed under section 704(d).* If any amount of a partner's distributive share of a partnership's loss for the taxable year is disallowed under section 704(d), a ratable portion of the partner's distributive share of each item of deduction or loss of the partnership is disallowed for the taxable year. For purposes of the preceding sentence, the ratable portion of an item of deduction or loss is the amount of such item multiplied by the fraction obtained by dividing—

(*1*) The amount of the partner's distributive share of partnership loss that is disallowed for the taxable year; by

(*2*) The sum of the partner's distributive shares of all items of deduction and loss of the partnership for the taxable year.

(B) *Deductions disallowed under section 1366(d).* If any amount of an S corporation shareholder's pro rata share of an S corporation's loss for the taxable year is disallowed under section 1366(d), a ratable portion of the taxpayer's pro rata share of each item of deduction or loss of the S corporation is disallowed for the taxable year. For purposes of the preceding sentence, the ratable portion of an item of deduction or loss is the amount of such item multiplied by the fraction obtained by dividing—

(*1*) The amount of the shareholder's pro rata share of S corporation loss that is disallowed for the taxable year; by

(*2*) The sum of the shareholder's pro rata shares of all items of deduction and loss of the corporation for the taxable year.

(iii) *Proration of deductions disallowed under at-risk limitation.* If any amount of the taxpayer's loss from an activity (within the meaning of section 465(c)) is disallowed under section 465 for the taxable year, a ratable portion of each item of deduction or loss from the activity is disallowed for the taxable year. For purposes of the preceding sentence, the ratable portion of an item of deduction or loss is the amount of such item multiplied by the fraction obtained by dividing—

(*1*) The amount of the loss from the activity that is disallowed for the taxable year; by

(*2*) The sum of all deductions from the activity for the taxable year.

(iv) *Coordination of basis and at-risk limitations.* The portion of any item of deduction or loss that is disallowed for the taxable year under section 704(d) or 1366(d) is not taken into account for the taxable year in determining the loss from an activity (within the meaning of section 465(c)) for purposes of applying section 465.

(v) *Separately identified items of deduction and loss.* In identifying the items of deduction and loss from an activity that are not disallowed under sections 704(d), 1366(d), and 465 (and that therefore may be treated as passive activity deductions), the taxpayer need not account separately for any item of deduction or loss unless such item may, if separately taken into account, result in an income tax liability different from that which would result were such item of deduction or loss taken into account separately. For related rules applicable to partnerships and S corporations, see § 1.702–1(a)(8)(ii) and section 1366(a)(1)(A), respectively. Items of deduction or loss that must be accounted for separately include (but are not limited to) items of deduction or loss that—

(A) Are attributable to separate activities (within the meaning of the rules to be contained in § 1.469–4T);

(B) Arise in a rental real estate activity (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in taxable years in which the taxpayer activity participates (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in such activity;

(C) Arise in a rental real estate activity (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in taxable years in which the taxpayer does not actively participate (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in such activity;

(D) Arose in a taxable year beginning before 1987 and were not allowed for such taxable year under section 704(d), 1366(d), or 465(a)(2);

(E) Are taken into account under section 1211 (relating to the limitation on capital losses) or section 1231 (relating to property used in a trade or business and involuntary conversions); or

(F) Are attributable to pre-enactment interests in activities (within the meaning of § 1.469–11T(c)).

(7) *Deductions from section 481 adjustment*—(i) *In general.* If a change in accounting method results in a negative section 481 adjustment with respect to an activity, a ratable portion (within the meaning of paragraph (d)(7)(iii) of this section) of the amount taken into account for a taxable year as a net negative section 481 adjustment by reason of such change shall be treated as a deduction from the activity for such taxable year, and such deduction shall be treated as a passive activity deduction if and only if such activity is a passive activity for the year of the change (within the meaning of section 481(a)). See the rules to be contained in § 1.469–1T(k) for the treatment of passive activity deductions from an activity in taxable years in which the activity is a former passive activity.

(ii) *Negative section 481 adjustments.* For purposes of applying this paragraph (d)(7)—

(A) The term "net negative section 481 adjustment" means the decrease (if any) in taxable income taken into account under section 481(a) to prevent amounts from being duplicated or omitted by reason of a change in accounting method; and

(B) The term "negative section 481 adjustment with respect to an activity" means the decrease (if any) in taxable income that would be taken into account under section 481(a) to prevent only the duplication or omission of amounts from such activity by reason of the change in accounting method.

(iii) *Ratable portion.* The ratable portion of the amount taken into account as a net negative section 481 adjustments for a taxable year by reason of a change in accounting method is determined with respect to an activity by multiplying such amount by the fraction obtained by dividing—

(A) The negative section 481 adjustment with respect to the activity; by

(B) The sum of the negative section 481 adjustments with respect to all of the activities of the taxpayer.

(8) *Taxable year in which item arises.* For purposes of this paragraph (d), an item of deduction arises in the taxable year in which such item would be allowable as a deduction under the taxpayer's method of accounting if taxable income for all taxable years were determined without regard to sections 469 and 1211.

(e) *Special rules for partners and S corporation shareholders*—(1) *In general.* For purposes of section 469 and the regulations thereunder, the character (as an item of passive activity gross income or passive activity deduction) of each item of gross income and deduction allocated to a taxpayer from a partnership or S corporation (a "passthrough entity") shall be determined, in any case in which participation is relevant, by reference to the participation of the taxpayer in the activity (or activities) that generated such item. Such participation is determined for the taxable year of the passthrough entity (and not the taxable year of the taxpayer). The following example illustrates the application of this paragraph (e)(1):

Example. A, a calendar year individual, is a partner in a partnership that has a taxable year ending January 31. During its taxable year ending on January 31, 1988, the partnership engages in a single trade or business activity. For the period from February 1, 1987, through January 31, 1988, A does not materially participate in this activity. In A's calendar year 1988 return, A's distributive share of the partnership's gross income and deductions from the activity must be treated as passive activity gross income and passive activity deductions, without regard to A's participation in the activity from February 1, 1988, through December 31, 1988. See also § 1.469–11T(a)(4) (relating to the effective date of, and transition rules under, section 469 and the regulations thereunder).

(2) *Payments under sections 707(a), 707(c), and 736(b).* Items of gross income and deduction attributable to a transaction described in section 707(a), 707(c), or 736(b) shall be characterized for purposes of section 469 and the regulations thereunder in accordance with the following rules:

(i) *Section 707(a).* Any item of gross income or deduction attributable to a transaction that is treated under section 707(a) as a transaction between a partnership and a partner acting in a capacity other than as a member of such partnership shall be characterized for purposes of section 469 and the regulations thereunder in a manner that is consistent with the treatment of such transaction under section 707(a).

(ii) *Section 707(c)*—(A) *In general.* Except as provided in paragraph(e)(2)(ii)(B) of this section, any payment to a partner for services or the use of capital that is described in section 707(c) (including any payment described in section 736(a)(2) (relating to guaranteed payments made in liquidation of the interest of a retiring or deceased partner)) shall be characterized as the payment of compensation for services or as the payment of interest, respectively, and not as a distributive share of partnership income.

(B) *Exception.* (*1*) If section 736(a)(2) applies to a payment made in liquidation of a retiring or deceased partner's interest, any income that—

(*i*) Is taken into account by a retiring partner (or any other person that owns (directly or indirectly) an interest in such partner if such partner is a passthrough entity) or a deceased partner's successor in interest as a result of such payment; and

(*ii*) Is attributable to the portion (if any) of such payment that is allocable to the unrealized receivables (within the meaning of section 751(c)) and goodwill of an activity of the partnership; shall be treated as passive activity gross income if and only if the activity was a passive activity of such retiring or deceased partner (or such other person) for the taxable year of such retiring or deceased partner (or such other person) in which the liquidation of such partner's interest commenced.

(*2*) If section 736(a)(2) applies to a payment made in liquidation of a retiring or deceased partner's interest, the portion (if any) of such payment that is allocable to the unrealized receivables (within the meaning of section 751(c)) and goodwill of an activity of the partnership is determined, for purposes of this paragraph (e)(2)(ii)(B), by multiplying the amount of such payment by the fraction obtained by dividing—

(*i*) The amount to be paid under section 736(a)(2) in liquidation of such partner's interest in the unrealized receivables and goodwill of such activity of the partnership; by

(*ii*) The sum of all payments to be made under section 736(a)(2) in liquidation of such partner's interest.

(iii) *Section 736(b).* If any gain or loss is taken into account by a retiring partner (or any other person that owns (directly or indirectly) an interest in such partner if such partner is a passthrough entity) or a deceased partner's successor in interest as a result of a payment to which section 736(b) (relating to payments made in exchange for a retiring or deceased partner's interest in partnership property) applies, such gain or loss shall be treated as passive activity gross income or a passive activity deduction only to the extent that such gain or loss would have been passive activity gross income or a passive activity deduction of such retiring or deceased partner (or such other person) if it had been recognized at the time the liquidation of such partner's interest commenced.

(3) *Sale or exchange of interest in passthrough entity*—(i) *Application of this paragraph (e)(3).* In the case of the sale, exchange, or other disposition (a "disposition") of an interest in a passthrough entity, the amount of the seller's gain or loss from each activity in which such entity has an interest is determined, for purposes of section 469 and the regulations thereunder, under this paragraph (e)(3). In the case of any such disposition, except as otherwise provided in paragraph (e)(3)(iii) or (iv) of this section, paragraph (e)(3)(ii) of this section shall apply. See paragraphs (c)(2) and (d)(5) of this section for rules for determining the character of gain or loss, respectively, recognized upon a disposition of an interest in an activity held through a passthrough entity.

(ii) *General rule*—(A) *Allocation among activities.* Except as otherwise provided in this paragraph (e)(3)(ii) or in paragraph (e)(3) (iii) or (iv) of this section, if a holder of an interest in a passthrough entity disposes of such interest, a ratable portion (within the meaning of paragraph (e)(3)(ii)(B) of this section) of any gain or loss from such disposition shall be treated as gain or

loss from the disposition of an interest in each trade or business, rental, or investment activity in which such passthrough entity owns an interest on the applicable valuation date.

(B) *Ratable portion*—(*1*) *Dispositions on which gain is recognized.* The ratable portion of any gain from the disposition of an interest in a passthrough entity that is allocable to an activity described in paragraph (e)(3)(ii)(A) of this section is determined by multiplying the amount of such gain by the fraction obtained by dividing—

(*i*) The amount of net gain (within the meaning of paragraph (e)(3)(ii)(E)(*3*) of this section) that would have been allocated to the holder of such interest with respect thereto if the passthrough entity had sold its entire interest in such activity for its fair market value on the applicable valuation date; by

(*ii*) The sum of the amounts of net gain that would have been allocated to the holder of such interest with respect thereto if the passthrough entity had sold its entire interest in each appreciated activity (within the meaning of paragraph (e)(3)(ii)(E)(*1*) of this section) described in paragraph (e)(3)(ii)(A) of this section for the fair market value of each such activity on the applicable valuation date.

(*2*) *Dispositions on which loss is recognized.* The ratable portion of any loss from the disposition of an interest in a passthrough entity that is allocable to an activity described in paragraph (e)(3)(ii)(A) of this section is determined by multiplying the amount of such loss by the fraction obtained by dividing—

(*i*) The amount of net loss (within the meaning of paragraph (e)(3)(ii)(E)(*4*) of this section) that would have been allocated to the holder of such interest with respect thereto if the passthrough entity had sold its entire interest in such activity for its fair market value on the applicable valuation date; by

(*ii*) The sum of the amounts of net loss that would have been allocated to the holder of such interest with respect thereto if the passthrough entity had sold its entire interest in each depreciated activity (within the meaning of paragraph (e)(3)(ii)(E)(*2*) of this section) described in paragraph (e)(3)(ii)(A) of this section for the fair market value of each such activity on the applicable valuation date.

(C) *Default rule.* If the gain or loss recognized upon the disposition of an interest in a passthrough entity cannot be allocated under paragraph (e)(3)(ii)(A) of this section, such gain or loss shall be allocated among the activities described in paragraph (e)(3)(ii)(A) of this section in proportion to the respective fair market values of the passthrough entity's interests in such activities at the applicable valuation date, and the gain or loss allocated to each activity of the passthrough entity shall be treated as gain or loss from the disposition of an interest in such activity.

(D) *Special rules.* For purposes of this paragraph (e)(3)(ii), the following rules shall apply:

(*1*) *Applicable valuation date*—(*i*) *In general.* Except as otherwise provided in paragraph (e)(3)(ii)(D)(*1*)(*ii*) of this section, the applicable valuation date with respect to any disposition of an interest in a passthrough entity is whichever one of the following dates is selected by the passthrough entity:

(*a*) The beginning of the taxable year of the passthrough entity in which such disposition occurs; or

(*b*) The date on which such disposition occurs.

(*ii*) *Exception.* If, after the beginning of a passthrough entity's taxable year in which a holder's disposition of an interest in such passthrough entity occurs and before the time of such disposition—

(*a*) The passthrough entity disposes of more than 10 percent of its interest (by value as of the beginning of such taxable year) in any activity;

(*b*) More than 10 percent of the property (by value as of the beginning of such taxable year) used in any activity of the passthrough entity is disposed of; or

(*c*) The holder of such interest contributes to the passthrough entity substantially appreciated property or substantially depreciated property with a total fair market value or adjusted basis, respectively, which exceeds 10 percent of the total fair market value of the holder's interest in the passthrough entity as of the beginning of such taxable year;

then the applicable valuation date shall be the date immediately preceding the date on which such disposition occurs.

(*2*) *Basis adjustments.* Any adjustment to the basis of partnership property under section 743(b) made with respect to the holder of an interest in a partnership shall be taken into account in computing the net gain or net loss that would have been allocated to the holder with respect to such interest if the partnership had sold its entire interest in an activity.

(*3*) *Tiered passthrough entities.* In the case of a disposition of an interest in a passthrough entity (the "subsidiary passthrough entity") by a holder that is also a passthrough entity, any gain or loss from such disposition that is taken into account by any person that owns (directly or indirectly) an interest in such holder shall be allocated among the activities of the subsidiary passthrough entity by applying the rules of this paragraph (e)(3)(ii) to the person taking such gain or loss into account as if such person has been the holder of an interest in such subsidiary passthrough entity and had recognized such gain or loss as a result of a disposition of such interest.

(E) *Meaning of certain terms.* For purposes of this paragraph (e)(3)(ii)—

(*1*) An activity is an appreciated activity with respect to a holder that has disposed of an interest in a passthrough entity if a net gain would have been allocated to the holder with respect to such interest if the passthrough entity has sold its entire interest in such activity for its fair market value on the applicable valuation date;

(*2*) An activity is a depreciated activity with respect to a holder that has disposed of an interest in a passthrough entity if a net loss would have been allocated to the holder with respect to such interest if the passthrough entity had sold its entire interest in such activity for its fair market value on the applicable valuation date;

(*3*) The term "net gain" means, with respect to the sale of a passthrough entity's entire interest in an activity, the amount by which the gains from the sale of all of the property used by (or representing the interest of) the passthrough entity in such activity exceed the losses (if any) from such sale;

(*4*) The term "net loss" means, with respect to the sale of a passthrough entity's entire interest in an activity, the amount by which the losses from the sale of all of the property used by (or representing the interest of) the passthrough entity in such activity exceed the gains (if any) from such sale.

(iii) *Treatment of gain allocated to certain passive activities as not from a passive activity.* If, in the case of a disposition of an interest in a passthrough entity—

(A) An amount of gain recognized on account of such disposition by the holder of such interest (or any other person that owns (directly or indirectly) an interest in such holder if such holder is a passthrough entity) is allocated to a passive activity of such holder (or such other person) under paragraph (e)(3)(ii) of this section;

(B) An amount of gain that would have been treated as gain that is not from a passive activity under paragraph (c)(2)(iii) of this section (relating to substantially appreciated property formerly used in a nonpassive activity)

would have been allocated to such holder (or such other person) with respect to such interest if all of the property used in such passive activity had been sold immediately prior to the disposition for its fair market value on the applicable valuation date (within the meaning of paragraph (e)(3)(ii)(D)(*1*) of this section; and

(C) The amount of the gain of the holder (or such other person) described in paragraph (e)(3)(iii)(B) of this section exceeds 10 percent of the amount of the gain of the holder (or such other person) described in paragraph (e)(3)(iii)(A) of this section;

then the gain of the holder (or such other person) that is described in paragraph (e)(3)(iii)(A) of this section shall be treated as gain that is not from a passive activity to the extent that such gain does not exceed the amount of the gain of the holder (or such other person) described in paragraph (e)(3)(iii)(B) of this section. For purposes of applying the preceding sentence to the disposition of an interest in a partnership, the amount of gain that would have been allocated to the holder (or such other person) if all of the property used in an activity had been sold shall be determined by taking into account any adjustment to the basis of partnership property made with respect to such holder (or such other person) under section 743(b).

(iv) *Dispositions occurring in taxable years beginning before February 19, 1988*—(A) *In general.* Except as otherwise provided in this paragraph (e)(3)(iv), if the holder of an interest in a passthrough entity sells, exchanges, or otherwise disposes of all or part of such interest during a taxable year of such entity beginning prior to February 19, 1988, any gain or loss recognized from such disposition shall be allocated among the activities of the passthrough entity under any reasonable method selected by the passthrough entity, and the gain or loss allocated to each activity of the passthrough entity shall be treated as gain or loss from the disposition of an interest in such activity. For purposes of the preceding sentence, a reasonable method shall include the method prescribed by paragraph (e)(3)(ii) of this section. In addition, a method that allocates gain or loss among the passthrough entity's activities on the basis of the fair market value, cost, or adjusted basis of the property used in such activities shall generally be considered a reasonable method for purposes of this paragraph (e)(3)(iv).

(B) *Exceptions.* This paragraph (e)(3)(iv) shall not apply to any disposition of an interest in a passthrough entity occurring after February 19, 1988, if after such date, but before the holder's disposition of such interest, the holder (or any other person that owns (directly or indirectly) an interest in such holder if such holder is a passthrough entity) contributes to the passthrough entity substantially appreciated portfolio assets or any other substantially appreciated property that was used in any trade or business activity (within the meaning of § 1.469–1T(e)) of the holder (or such other person) during—

(*1*) The taxable year of such person in which such contribution occurs; or

(*2*) The immediately preceding taxable year of such person;

but only if such person materially participated (within the meaning of § 1.469–5T) in the activity for such year.

(v) *Treatment of portfolio assets.* For purposes of the paragraph (e)(3), all portfolio assets owned by a passthrough entity shall be treated as held in a single investment activity.

(vi) *Definitions.* For purposes of this paragraph (e)(3)—

(A) The term "portfolio asset" means any property of a type that produces portfolio income (within the meaning of paragraph (c)(3)(i) of this section);

(B) The term "substantially appreciated property" means property with a fair market value that exceeds 120 percent of its adjusted basis; and

(C) The term "substantially depreciated property" means property with an adjusted basis that exceeds 120 percent of its fair market value.

(vii) *Examples.* The following examples illustrate the application of this paragraph (e)(3):

Example (1). (i) A owns a one-half interest in P, a calendar year partnership. In 1993, A sells 50 percent of such interest for $50,000. A's adjusted basis for the interest sold is $30,000. Thus, A recognizes $20,000 of gain from the sale. P is engaged in three trade or business activities, X, Y, and Z, and owns marketable securities that are portfolio assets. For 1993, A materially participates in activity Z, but does not participate in activities X and Y. Paragraph (c)(2)(iii) of this section would not have applied to any of the gain that A would have been allocated if, immediately before A's sale, P had disposed of all of the property used in its trade or business activities. During the portion of 1993 preceding A's sale, P did not sell any of the property used in its activities, and A did not contribute any property to P.

(ii) Under paragraph (e)(3)(ii) of this section, a ratable portion of A's $20,000 gain is allocated to each appreciated activity in which P owned an interest on the applicable valuation date (within the meaning of paragraph (e)(3)(ii)(D)(*1*) of this section). For this purpose, paragraph (e)(3)(v) of this section treats the marketable securities owned by P as a single investment activity.

(iii) P selects the beginning of 1993 as the applicable valuation date pursuant to paragraph (e)(3)(ii)(D)(*1*)(*i*) of this section. P is not required to use the date of A's sale as the applicable valuation date under paragraph (e)(3)(ii)(D)(*1*)(*ii*) of this section because during the portion of 1993 preceding A's sale, P did not sell any of its property and A did not contribute any property to P. At the beginning of 1993, the fair market value and adjusted basis of the property used in P's activities are as follows:

	Adjusted basis	Fair market value
X	$68,000	$48,000
Y	30,000	62,000
Z	20,000	80,000
Marketable securities	2,000	10,000
Total	120,000	200,000

(iv) Under paragraph (e)(3)(ii)(B) of this section, the portion of A's $20,000 gain that is allocated to an appreciated activity of P (i.e., activities Y and Z and the marketable securities) is the amount of such gain multiplied by the fraction obtained by dividing (a) the net gain that would have been allocated to A with respect to the interest sold by A if P had sold its entire interest in such activity at the beginning of 1993 by (b) the sum of the amounts of net gain that would have been allocated to A with respect to the interest sold by A if P had sold its entire interest in each appreciated activity at the beginning of 1993.

(v) If P had sold its entire interest in activities Y and Z and the marketable securities at the beginning of 1993, A would have been allocated the following amounts of net gain with respect to the interest in P that A sold in 1993:

Activity	Net gain
Y	$8,000
Z	15,000
Marketable securities	2,000
Total	25,000

(vi) Accordingly, under paragraph (e)(3)(ii) of this section, $6,400 of A's $20,000 gain ($20,000 × $8,000/$25,000) is allocated to activity Y, $12,000 of A's $20,000 gain ($20,000 × $15,000/$25,000) is allocated to activity Z, and $1,600 of A's $20,000 gain ($20,000 × $2,000/$25,000) is allocated to the marketable securities. The gain allocated to activity Y is passive activity gross income. None of that gain is treated as gain that is not from a passive activity under paragraph (e)(3)(iii) of this section because paragraph (c)(2)(iii) of this section would not have applied to any of the gain that A would have been allocated if P had sold all of the property used in activity Y immediately prior to A's sale.

Example (2). (i) B and C, calendar year individuals, are equal partners in calendar year partnership R, which they formed on January 1, 2005, with contributions of property and money. The only item of

property (other than money) contributed by B was a building that B had used for 12 years preceding the contribution in an activity that was not a passive activity during such period. At the time of its contribution, the building had an adjusted basis of $40,000 and a fair market value of $66,000. R is engaged in a single activity: the sale of equipment to customers in the ordinary course of the business of dealing in such property. R uses the building contributed by B in the dealership activity. B did not materially participate in the dealership activity during 2005. On July 1, 2005, D purchases one-half of B's interest in R for $37,500 in cash. At the time of the sale, the balance sheet of R, which uses the accrual method of accounting, is as follows:

	Adjusted basis per books	Fair market value
Assets		
Cash	$30,000	$30,000
Accounts receivable:		
Dealership	20,000	18,000
Inventory:		
Dealership	52,000	66,000
Building	40,000	66,000
Total	142,000	180,000
Liabilities and Capital		
Liabilities	$30,000	$30,000
Capital:		
B	47,000	75,000
C	65,000	75,000
Total	142,000	180,000

Thus, B's gain from the sale is $14,000 ($45,000 amount realized from the sale (consisting of $37,500 of cash and $7,500 of liabilities assumed by the purchaser) minus B's $31,000 adjusted basis for the interest sold (one-half of B's total adjusted basis of $62,000)).

(ii) Under paragraph (e)(3)(ii) of this section, all $14,000 of B's gain from the sale is allocated to R's dealership activity, which is a passive activity of B for 2005. If, however, R had sold its interest in the building immediately prior to B's sale for its fair market value on the applicable valuation date (the valuation date selected by R is irrelevant since the building had a fair market value of $66,000 at the beginning of 2005 and at the time of the sale), B would have been allocated $13,000 of gain under section 704(c) with respect to the interest in R that B sold to D. This gain would have been treated as gain that is not from a passive activity under paragraph (c)(2)(iii) of this section and would have exceeded 10 percent of the total amount of B's gain that is allocated to the dealership activity under paragraph (e)(3)(ii) of this section. Accordingly, under paragraph (e)(3)(iii) of this section, B's gain from the sale ($14,000) is treated as gain that is not from a passive activity to the extent that such gain does not exceed the amount of gain subject to paragraph (c)(2)(iii) of this section that B would have been allocated with respect to the interest sold to D if R had sold all of the property used in the dealership activity immediately prior to B's sale ($13,000). Thus, $13,000 of B's gain from the sale is treated as gain that is not from a passive activity.

(f) *Recharacterization of passive income in certain situations*—(1) *In general.* This paragraph (f) sets forth rules that require income from certain passive activities to be treated as income that is not from a passive activity (regardless of whether such income is treated as passive activity gross income under section 469 or any other provision of the regulations thereunder). For definitions of certain terms used in this paragraph (f), see paragraph (f)(9) of this section.

(2) *Special rule for significant participation*—(i) *In general.* An amount of the taxpayer's gross income from each significant participation passive activity for the taxable year equal to a ratable portion of the taxpayer's net passive income from such activity for the taxable year shall be treated as not from a passive activity if the taxpayer's passive activity gross income from all significant participation passive activities for the taxable year (determined without regard to paragraphs (f) (2) through (4) of this section) exceeds the taxpayer's passive activity deductions from all such activities for such year. For purposes of this paragraph (f)(2), the ratable portion of the net passive income from an activity is determined by multiplying the amount of such income by the fraction obtained by dividing—

(A) The amount of the excess described in the preceding sentence; by

(B) The amount of the excess described in the preceding sentence taking into account only significant participation passive activities from which the taxpayer has net passive income for the taxable year.

(ii) *Significant participation passive activity.* For purposes of this paragraph (f)(2), the term "significant participation passive activity" means any trade or business activity (within the meaning of § 1.469–1T(e)(2)) in which the taxpayer significantly participates (within the meaning of § 1.469–5T(c)(2)) for the taxable year but in which the taxpayer does not materially participate (within the meaning of § 1.469–5T) for such year.

(iii) *Example.* The following example illustrates the application of this paragraph (f)(2):

Example. (i) A owns interests in three trade or business activities, X, Y, and Z. A does not materially participate in any of these activities for the taxable year, but participates in activity X for 110 hours, in activity Y for 160 hours, and in activity Z for 125 hours. A owns no interest in any other trade or business activity in which A does not materially participate for the taxable year but in which A participates for more than 100 hours during the taxable year. A's net passive income (or loss) for the taxable year from activities X, Y, and Z is as follows:

	X	Y	Z
Passive activity gross income	$600	$700	$900
Passive activity deductions	(200)	(1,000)	(300)
Net passive income	400	(300)	600

(ii) Under paragraph (f)(2)(ii) of this section, activities X, Y, and Z are A's only significant participation passive activities for the taxable year. A's passive activity gross income from significant participation passive activities ($2,200) exceeds A's passive activity deductions from significant participation passive activities ($1,500) by $700 for such year. Therefore, under paragraph (f)(2)(i) of this section, a ratable portion of A's gross income from activities X and Z (A's significant participation passive activities with net passive income for the taxable year) is treated as gross income that is not from a passive activity. The ratable portion is determined by dividing (a) the amount by which A's passive activity gross income from significant participation passive activities exceeds A's passive activity deductions from significant participation passive activities for the taxable year ($700) by (b) such excess taking into account only A's significant participation passive activities having net passive income for the taxable year ($1,000). Accordingly, $280 of gross income from activity X ($400 x 700/1000) and $420 of gross income from activity Z ($600 x 700/1000) is treated as gross income that is not from a passive activity.

(3) *Rental of nondepreciable property.* If less than 30 percent of the unadjusted basis of the property used or held for use by customers in a rental activity (within the meaning of § 1.469–1T(e)(3)) during the taxable year is subject to the allowance for depreciation under section 167, an amount of the taxpayer's gross income from the activity equal to the taxpayer's net passive income from the activity shall be treated as not from a passive activity. For purposes of this paragraph (f)(3), the term "unadjusted basis" means adjusted basis determined without regard to any adjustment described in section 1016 that decreases basis. The following example illustrates the application of this paragraph (f)(3):

Example. C is a limited partner in a partnership. The partnership acquires vacant land for $300,000, constructs improvements on the land at a cost of $100,000, and leases the land and improvements to a tenant. The partnership then sells the land and improvements for $600,000, thereby realizing a gain on the disposition. The unadjusted basis of the improvements ($100,000) equals 25 percent of the unadjusted basis of all

property ($400,000) used in the rental activity. Therefore, under this paragraph (f)(3), an amount of C's gross income from the activity equal to the net passive income from the activity (which is computed by taking into account the gain from the disposition, including gain allocable to the improvements) is treated as not from a passive activity.

(4) *Net interest income from passive equity-financed lending activity*—(i) *In general.* An amount of the taxpayer's gross income for the taxable year from any equity-financed lending activity equal to the lesser of—

(A) The taxpayer's equity-financed interest income from the activity for such year; and

(B) The taxpayer's net passive income from the activity for such year

shall be treated as not from a passive activity.

(ii) *Equity-financed lending activity*—(A) *In general.* For purposes of this paragraph (f)(4), an activity is an equity-financed lending activity for a taxable year if—

(*1*) The activity involves a trade or business of lending money; and

(*2*) The average outstanding balance of the liabilities incurred in the activity for the taxable year does not exceed 80 percent of the average outstanding balance of the interest-bearing assets held in the activity for such year.

(B) *Certain liabilities not taken into account.* For purposes of paragraph (f)(4)(ii)(A)(*2*) of this section, liabilities incurred principally for the purpose of increasing the percentage described in paragraph (f)(4)(ii)(A)(*2*) of this section shall not be taken into account in computing such percentage.

(iii) *Equity-financed interest income.* For purposes of this paragraph (f)(4), the taxpayer's equity-financed interest income from an activity for a taxable year is the amount of the taxpayer's net interest income from the activity for such year multiplied by the fraction obtained by dividing—

(A) The excess of the average outstanding balance for such year of the interest-bearing assets held in the activity over the average outstanding balance for such year of the liabilities incurred in the activity; by

(B) The average outstanding balance for such year of the interest-bearing assets held in the activity.

(iv) *Net interest income.* For purposes of this paragraph (f)(4), the net interest income from an activity for a taxable year is—

(A) The gross interest income from the activity for such year; reduced by

(B) Expenses from the activity (other than interest on liabilities described in paragraph (f)(4)(vi) of this section) for such year that are reasonably allocable to such gross interest income.

(v) *Interest-bearing assets.* For purposes of this paragraph (f)(4), the interest-bearing assets held in an activity include all assets that produce interest income, including loans to customers.

(vi) *Liabilities incurred in the activity.* For purposes of this paragraph (f)(4), liabilities incurred in an activity include all fixed and determinable liabilities incurred in the activity that bear interest or are issued with original issue discount other than debts secured by tangible property used in the activity. In the case of an activity conducted by an entity in which the taxpayer owns a interest, liabilities incurred in an activity include only liabilities with respect to which the entity is the borrower.

(vii) *Average outstanding balance.* For purposes of this paragraph (f)(4), the average outstanding balance of liabilities incurred in an activity or of the interest-bearing assets held in an activity may be computed on a daily, monthly, or quarterly basis at the option of the taxpayer.

(viii) *Example.* The following example illustrates the application of this paragraph (f)(4):

Example: (i) A, a calendar year individual, acquires on January 1, 1988, a limited partnership interest in P, a calendar year partnership. Under the partnership agreement, A has a one percent share of each item of income, gain, loss, deduction, and credit of P. A acquires the partnership interest for $90,000, using $50,000 of unborrowed funds and $40,000 of proceeds of a loan bearing interest at an annual rate of 10 percent. A pays $4,000 of interest on the loan in 1988.

(ii) P's sole activity is a trade or business of lending money. A does not materially participate in the activity for 1988. During 1988, the average outstanding balance of P's interest-bearing assets (including loans to customers, temporary deposits with other lending institutions, and government and corporate securities) is $20 million. P incurs numerous interest-bearing liabilities in connection with its lending activity, including liabilities for deposits taken from customers, unsecured short-term and long-term loans from other lending institutions, and a mortgage loan secured by the building, owned by P, in which P conducts its business. For 1988, the average outstanding balance of all of these liabilities (other than the mortgage loan) is $11 million. None of these liabilities was incurred by P principally for the purpose of increasing the percentage described in paragraph (f)(4)(ii)(*2*) of this section.

(iii) The interest income derived by P for 1988 from its interest-bearing assets is $2.2 million. The interest expense paid by P for 1988 with respect to the liabilities incurred in connection with its lending activity (other than the mortgage loan) is $990,000. P's other expenses for 1988 that are reasonably allocable to P's gross interest income (including expenses for advertising, loan processing and servicing, and insurance, and depreciation on P's building) total $250,000. P's interest expense for 1988 on the mortgage loan secured by the building used in P's lending activity is $50,000. All of the interest expense paid or incurred by P for 1988 is allocated under § 1.63–8T to expeditures in connection with P's lending activity.

(iv) Under paragraph (f)(4)(ii) of this section, P's activity is an equity-financed lending activity for 1988, since, for 1988, the activity involves a trade or business of lending money and the average outstanding balance of the liabilities incurred in the activity ($11 million) does not exceed 80 percent of the average outstanding balance of the interest-bearing assets held in the activity ($20 million). Accordingly, under paragraph (f)(4)(i) of this section, an amount of A's gross income from the activity equal to the lesser of (a) A's equity-financed interest income from the activity for 1988, or (b) A's net passive income from the activity for 1988, is treated as income that is not from a passive activity.

(v) Under paragraph (f)(4)(iii) of this section, A's equity-financed interest income from the activity for 1988 is determined by multiplying A's net interest income from the activity for 1988 by the fraction obtained by dividing $9 million (the excess of the average interest-bearing assets for 1988 over the average interest-bearing liabilities for 1988) by $20 million (the average interest-bearing assets for 1988). Under paragraph (f)(4)(iv) of this section, A's net interest income from the activity for 1988 is $19,000 (A's distributive share of $2.2 million of gross interest income less A's distributive share of $300,000 of expenses described in paragraph (f)(4)(iv)(B) of this section, including interest expense on the mortgage loan). A's distributive share of P's other interest expense ($990,000) is not taken into account in computing A's net interest income for 1988. Accordingly, A's equity-financed interest income from the activity for 1988 is $8,550 ($19,000 x $9 million/$20 million).

(vi) Under paragraph (f)(9)(i) of this section, A's net passive income from the activity for 1988 is determined by taking into account A's distributive share of P's gross income and deductions from the activity for 1988, as well as any interest expense incurred by A individually that is taken into account under § 1.163–8T in determining A's income or loss from the activity for 1988. Assuming that for 1988 all $4,000 of interest expense on the loan that A used to finance the acquisition of A's interest in P is allocated under § 1.163–8T to expenditures of A in connection with the lending activity for 1988, A's net passive income from the activity for 1988 is $5,100, computed as set forth in the following table:

Gross income:	
Interest income	$22,000
Deductions:	
Distributive share of P's expenses from the activity	(12,900)

Interest expense on A's acquisition debt	(4,000)
Net passive income	5,100

(vii) A's net passive income from the activity for 1988 ($5,100) is less than A's equity-financed income form the activity for 1988 ($8,550). Accordingly, under this paragraph (f)(4), $5,100 of A's gross income from the activity for 1988 is treated as not from a passive activity.

(5) *Net income from certain property rented incidental to development activity*—(i) *In general.* An amount of the taxpayer's gross rental activity income for the taxable year from an item of property used in a rental activity for such year equal to the net rental activity income for the year from such item of property shall be treated as not from a passive activity if—

(A) Any gain from the sale, exchange, or other disposition of the item of property is included in the taxpayer's income for the taxable year;

(B) The use of the item of property in an activity involving the rental of such property commenced less than 24 months before the date of the disposition (within the meaning of paragraph (c)(2)(iii)(B) of this section) of such property; and

(C) The taxpayer materially participated (within the meaning of § 1.469–5T, but without regard to paragraph (e) thereof) or significantly participated (within the meaning of § 1.469–5T(c)(2)) for any taxable year in an activity that involved for such year the performance of services for the purpose of enhancing the value of such item of property (or any other item of property if the basis of the item of property that is sold, exchanged, or otherwise disposed of is determined in whole or in part by reference to the basis of such other item of property).

(ii) *Commencement of use.* For purposes of paragraph (f)(5)(i)(B) of this section, the use of an item of property in an activity involving the rental of such property commences when substantially all of the property is first held out for rent and is in a state of readiness for rental.

(iii) *Services performed for the purpose of enhancing the value of property.* For purposes of paragraph (f)(5)(i)(C) of this section, services that are treated as performed for the purpose of enhancing the value of an item of property include but are not limited to—

(A) Construction;

(B) Renovation; and

(C) Lease-up (but only if, as of the time the taxpayer commences using the property in the activity described in paragraph (f)(5)(i)(B), a substantial portion of the property is not leased).

(iv) *Example.* The following example illustrates the application of this paragraph (f)(5):

Example. (i) A, a calendar year individual, is a partner in calendar year partnership P, which is engaged in an activity of developing commercial real estate. In 1988, P acquires an interest in undeveloped land, and arranges for the financing and construction of an office building on the land. Beginning on March 1, 1990, substantially all of the building is held out for rent and is in a state of readiness for rental.

(ii) P holds the building for rent for the remainder of 1990 and all of 1991 and 1992, and sells the building on January 15, 1993, pursuant to a contract entered into on January 15, 1992. P did not hold the building for sale to customers in the ordinary course of P's trade or business (see § 1.469–1T (e)(3)(vi)(D)). A's distributive share of P's taxable losses from the rental of the building is $50,000, $30,000, and $30,000, respectively, for 1990, 1991, and 1992. All of A's losses from the rental of the building are disallowed under § 1.469–1T (a)(1)(i). A's distributive share of the gain recognized by P on the sale of the building is $150,000. A has no other gross income or deductions from the activity of renting the building.

(iii) For purposes of paragraph (f)(5)(i)(C), in 1988, 1989, and 1990, P's real estate development activity involves the performance of services for the purpose of enhancing the value of the building. In 1993, the building is sold, and the date on which the use of the building in the rental activity commenced (March 1, 1990) was less then 24 months before the date on which a binding contract for such sale was entered into (January 15, 1992). Accordingly, if A materially participated in P's real estate development activity in 1988, 1989, or 1990 (without regard to whether A materially participated in the activity in more than one of those years), an amount of A's gross rental activity income for 1993 from the building equal to A's net rental activity income for 1993 from such building ($150,000—$110,000 of previously disallowed deductions = $40,000) is treated under this paragraph (f)(5) as gross income that is not from a passive activity.

(6) *Property rented to a nonpassive activity.* An amount of the taxpayer's gross rental activity income for the taxable year from an item of property used in a rental activity for such year equal to the net rental activity income for the year from such item of property shall be treated as not from a passive activity if such property—

(i) Is rented for use in a trade or business activity (within the meaning of § 1.469–1T (e)(2)) in which the taxpayer materially participates (within the meaning of § 1.469–5T, but without regard to paragraph (e) thereof) for the taxable year; and

(ii) Is not described in paragraph (f)(5) of this section.

(7) *Special rules applicable to the acquisition of an interest in a passthrough entity engaged in the trade or business of licensing intangible property*—(i) *In general.* If a taxpayer acquires an interest in an entity described in paragraph (c)(3)(iii)(B)(*3*) of this section (the "development entity") after the development entity has created an item of intangible property or performed substantial services or incurred substantial costs with respect to the development or marketing of an item of intangible property, an amount of the taxpayer's gross royalty income for the taxable year from such item of property equal to the taxpayer's net royalty income for the year from such item of property shall be treated as not from a passive activity.

(ii) *Royalty income from property.* For purposes of this paragraph (f)(7)—

(A) A taxpayer's gross royalty income for a taxable year from an item of property is the taxpayer's share of passive activity gross income for such year (determined without regard to paragraphs (f)(2) through (7) of this section) from the licensing or transfer of any right in such property; and

(B) A taxpayer's net royalty income for a taxable year from an item of property is the excess, if any, of—

(*1*) The taxpayer's gross royalty income for the taxable year from such item of property; over

(*2*) Any passive activity deductions for such taxable year (including any deduction treated as a deduction for such year under § 1.469–1T (f)(4)) that are reasonably allocable to such item of property.

(iii) *Exceptions.* Paragraph (f)(7)(i) of this section shall not apply to a taxpayer's gross royalty income for a taxable year from the licensing of an item of intangible property if—

(A) The expenditures reasonably incurred by the development entity for the taxable year of the entity ending with or within the taxpayer's taxable year with respect to the development or marketing of such property satisfy paragraph (c)(3)(iii)(B)(*2*)(*ii*) (*a*) of this section; or

(B) The taxpayer's share of the expenditures reasonably incurred by the development entity with respect to the development or marketing of such property for all taxable years of the entity beginning with the taxable year of the entity in which the taxpayer acquired the interest in the entity and ending with the taxable year of the entity ending with or within the taxpayer's current taxable year exceeds 25 percent of the fair market value of the taxpayer's interest in such property at the time the taxpayer acquired the interest in the entity.

(iv) *Capital expenditures.* For purposes of paragraph (f)(7)(iii)(B) of this section, a capital expenditure shall be taken into account for the taxable year of the entity in which such expenditure is chargeable to capital account, and the taxpayer's share of such expenditure shall be determined as though such expenditure were allowed as a deduction for such year.

(v) *Example.* The following example illustrates the application of this paragraph (f)(7):

Example. (i) The facts are the same as in example (5) in paragraph (c)(3)(iv) of this section, except that, in 1988, D's 10 percent partnership interest is sold to F for $13,000, all of which is attributable to the design licensed by the partnership.

(ii) For 1988, the expenditures reasonably incurred by the partnership with respect to the development or marketing of the design satisfy paragraph (c)(3)(iii)(B)(*2*)(*ii*)(*a*) of this section. Accordingly, under paragraph (f)(7)(iii)(A) of this section, paragraph (f)(7)(i) of this section does not apply to F's distributive share of the partnership's gross income from licensing the design.

(iii) For 1989, the expenditures reasonably incurred by the partnership with respect to the development or marketing of the design do not satisfy paragraph (c)(3)(iii)(B)(*2*)(*ii*)(*a*) of this section. Moreover, F's distributive share of such expenditures reasonably incurred by the partnership for 1988 and 1989 ($27,000 x .10 = $2,700) does not exceed 25 percent of the fair market value of F's interest in the design at the time F acquired the partnership interest ($13,000). Accordingly, neither of the exceptions provided in paragraph (f)(7)(iii) of this section applies for 1989 and, under paragraph (f)(7)(i) of this section, an amount of F's gross royalty income from the design equal to F's net royalty income from the design is treated as not from a passive activity.

(8) *Limitation on recharacterized income.* The amount of gross income from an activity that is treated as not from a passive activity for the taxable year under subparagraphs (f) (2) through (4) of this paragraph (f) shall not exceed the greatest amount of gross income treated as not from a passive activity under any one of such subparagraphs.

(9) *Meaning of certain terms.* For purposes of this paragraph (f), the terms set forth below shall have the following meanings:

(i) The net passive income from an activity for a taxable year is the amount by which the taxpayer's passive activity gross income from the activity for the taxable year (determined without regard to paragraphs (f) (2) through (4) of this section) exceeds the taxpayer's passive activity deductions from the activity for such year;

(ii) The net passive loss from an activity for a taxable year is the amount by which the taxpayer's passive activity deductions from the activity for the taxable year exceeds the taxpayer's passive activity gross income from the activity for such year (determined without regard to paragraphs (f) (2) through (4) of this section).

(iii) The gross rental activity income for a taxable year from an item of property used in a rental activity for such year is any passive activity gross income for such year (determined without regard to paragraphs (f) (2) through (6) of this section) from the rental or disposition of such item of property; and

(iv) The net rental activity income from an item of property for a taxable year is the excess, if any, of—

(A) The gross rental activity income from such item of property for the taxable year; over

(B) Any passive activity deductions for such taxable year (including any deduction treated as a deduction for such year under § 1.469–1T(f)(4)) that are reasonably allocable to the use of such item of property in the rental activity.

(10) *Coordination with section 163(d).* Gross income that is treated as not from a passive activity under paragraph (f) (3), (4), or (7) of this section shall be treated as income described in section 469 (e)(1)(A) and paragraph (c)(3)(i) of this section except in determining whether—

(i) Any property is treated for purposes of section 469(e)(1)(A)(ii)(I) and paragraph (c)(3)(i)(C) of this section as property that produces income of a type described in paragraph (c)(3)(i)(A) of this section;

(ii) An expense (other than interest expense) is treated for purposes of section 469(e)(1)(A)(i)(II) and paragraph (d)(4) of this section as clearly and directly allocable to portfolio income (within the meaning of paragraph (c)(3)(i) of this section); and

(iii) Interest expense is allocated under § 1.163–8T to an investment expenditure (within the meaning of § 1.163–8T(b)(3)) or to a passive activity expenditure (within the meaning of § 1.163–8T(b)(4)).

(11) *Effective date.* For the effective date of the rules in this paragraph (f), see § 1.469–11T (relating to effective date and transition rules).

§ 1.469–3T Passive activity credit (temporary).

(a) *Computation of passive activity credit.* The taxpayer's passive activity credit for the taxable year is the amount (if any) by which—

(1) The sum of all of the taxpayer's credits that are subject to section 469 for such year; exceeds

(2) The taxpayer's regular tax liability allocable to all passive activities for such year.

(b) *Credits subject to section 469*—(1) *In general.* Except as otherwise provided in this paragraph (b), a credit is subject to section 469 for a taxable year if and only if—

(i) Such credit—

(A) Is attributable to such taxable year and arises in connection with the conduct of an activity that is a passive activity for such taxable year; and

(B) Is decribed in—

(*1*) Section 38(b) (1) through (5) (relating to general business credits);

(*2*) Section 27(b) (relating to corporations described in section 936);

(*3*) Section 28 (relating to clinical testing of certain drugs); or

(*4*) Section 29 (relating to fuel from nonconventional sources); or

(ii) Such credit is allocable to an activity for such taxable year under § 1.469–1T(f)(4).

(2) *Treatment of credits attributable to qualified progress expenditures.* Any credit attributable to an increase in qualified investment under section 46(d)(1)(A) (relating to qualified progress expenditures) with respect to progress expenditure property (as defined in section 46(d)(2)) is subject to section 469 for a taxable year if—

(i) Such credit is attributable to such taxable year;

(ii) Such credit is described in paragraph (b)(1)(i)(B) of this section; and

(iii) It is reasonable to believe that such progress expenditure property will be used in a passive activity of the taxpayer when it is placed in service.

(3) *Special rule for partners and S corporation shareholders.* The character of a credit of a taxpayer arising in connection with an activity conducted by a partnership or S corporation (as a credit subject to section 469) shall be determined, in any case in which participation is relevant, by reference to the participation of the taxpayer in such activity. Such participation is determined for the taxable year of the partnership or S corporation (and not the taxable year of the taxpayer). See § 1.469–2T(e)(1).

(4) *Exception for pre-1987 credits.* A credit is not subject to section 469 if it is attributable to a taxable year of the taxpayer beginning prior to January 1, 1987.

(c) *Taxable year to which credit is attributable.* A credit is attributable to the taxable year in which such credit would be (or would have been) allowed if the credits regard to the limitations contained in sections 26(a), 28(d)(2), 29(b)(5), 38(c), and 469.

(d) *Regular tax liability allocable to passive activities*—(1) *In general.* For purposes of paragraph (a)(2) of this section, the taxpayer's regular tax liability allocable to all passive activities for the taxable year is the excess (if any) of—

(i) The taxpayer's regular tax liability for such taxable year; over

(ii) The amount of such regular tax liability determined by reducing the taxpayer's income for such year by the excess (if any) of the taxpayer's passive activity gross income for such year over the taxpayer's passive activity deductions for such year.

(2) *Regular tax liability.* For purposes of this section, the term "regulary tax liability" has the meaning given such term in section 26(b).

(e) *Coordination with section 39.* For purposes of section 39 (relating to the carryback and carryforward of unused business credits), any credit described in section 38(b) (1) through (5) is treated as a current year business credit for the first taxable year in which such credit is subject to section 469 and is not disallowed by section 469 and the regulations thereunder.

(f) *Examples.* The following examples illustrate the application of this section:

Example (1). (i) A, a calendar year individual, is a general partner in calendar year partnership P. P purchases a building in 1987 and, in 1987, 1988, and 1989, incurs rehabilitation costs with respect to the building. The building is placed in service in the rental activity in 1989. P's rehabilitation costs are qualified rehabilitation expenditures (within the meaning of section 48(g)(2)) and are taken into account in determining the amount of the investment credit for rehabilitation expenditures. P's qualified rehabilitation expenditures are not qualified progress expenditures (within the meaning of section 46(d)).

(ii) Because, under section 46(c)(1), the credit is allowable for the taxable year in which the rehabilitated property is placed in service, the credit allowable for P's qualified rehabilitation expenditures arises in connection with the activity in which the property is placed in service. In addition, the credit is attributable to 1989, the year in which the property is placed in service, because it would be allowed for such year if A's credits allowed for all taxable years were determined without regard to the limitations contained in sections 26(a), 28(d)(2), 29(b)(5), 38(c), and 469. Accordingly, under paragraph (b)(1) of this section, A's distributive share of the credit is subject to section 469 for 1989 because the credit arises in connection with a rental activity for such year.

Example (2). The facts are the same as in example (1), except that the rehabilitation costs are incurred in anticipation of placing the building in service in a rental activity, the qualified rehabilitation expenditures in 1987 and 1988 are qualified progress expenditures ("QPEs") (within the meaning of section 46(d)(3)), the improvements resulting from the expenditures are progress expenditure property (within the meaning of paragraph (d)(2) of this section), and it is reasonable to expect that such property will be transition property (within the meaning of section 49(e)) when the property is placed in service. Therefore, under section 46(d)(1)(A), the qualified investment for 1987 and 1988 is increased by an amount equal to the aggregate of the applicable percentage of the qualified rehabilitation expenditures incurred in such years. The credits that are based on these expenditures are attributable (under paragraph (c) of this section) to 1987 and 1988, respectively. It is reasonable to believe in 1987 and 1988 that the progress expenditure property will be used in a rental activity when it is placed in service. Accordingly, under paragraph (b)(2) of this section, A's distributive share of the credit for 1987 and 1988 is subject to section 469. Under paragraph (b)(1) of this section (as in example (1)), A's distributive share of the credit for 1989 is also subject to section 469.

Example (3). (i) B, a single individual, acquires an interest in a partnership that, in 1988, rehabilitates a building and places it in service in a trade or business activity in which B does not materially participate. For 1988, B has the following items of gross income, deduction, and credit:

Gross income:		
Income other than passive activity gross income	$110,000	
Passive activity gross income	20,000	$130,000
Deductions:		
Deductions other than passive activity deductions	23,950	
Passive activity deductions	18,000	(41,950)
Taxable income		88,050
Credits:		
Rehabilitation credit from the passive activity		8,000

(ii) For 1988, the amount by which B's passive activity gross income exceeds B's passive activity deductions (B's net passive income) is $2,000. Under paragraph (d) of this section, B's regular tax liability allocable to passive activities for 1988 is determined as follows:

(A) Taxable income	$88,050	
(B) Regular tax liability		$24,578.50
(C) Taxable income minus net passive income	86,050	
(D) Regular tax liability for taxable income of $86,050.00		23,918.50
(E) Regular tax liability allocable to passive activities ((B) minus (D))		$660.00

(iii) Under paragraph (a) of this section, B's passive activity credit for 1988 is the amount by which B's credits that are subject to section 469 for 1988 ($8,000) exceed B's regular tax liability allocable to passive activities for 1988 ($660.00). Accordingly, B's passive activity credit for 1988 is $7,340.

Example (4). (i) The facts are the same as in example (3) except that, in 1988, B also has additional deductions of $100,000 from a trade or business activity in which B materially participates for 1988. Thus, B has a taxable loss for 1988 of $11,950, determined as follows:

Gross income:		
Income other than passive activity gross income	$110,000	
Passive activity gross income	20,000	$130,000
Deductions:		
Deductions other than passive activity deductions	123,950	
Passive activity deductions	18,000	(141,950)
Taxable income		(11,950)

(ii) Under section 26(b) and paragraph (d)(2) of this section, the regular tax liability for a taxable year cannot exceed the tax imposed by chapter 1 of subtitle A of the Internal Revenue Code for the taxable year. Therefore, under paragraph (d)(1) of this section, B's regular tax liability allocable to passive activities for 1988 is zero. Although B's net operating loss for the taxable year is reduced by B's net passive income, and B's regular tax liability for other taxable years may increase as a result of the reduction, such an increase does not change B's regular tax liability allocable to passive activities for 1988. Accordingly, B's passive activity credit for 1988 is $8,000.

§ 1.469-4T Definition of activity (temporary). [Reserved]

§ 1.469-5T Material participation (temporary).

(a) *In general.* Except as provided in paragraphs (e) and (h)(2) of this section, an individual shall be treated, for purposes of section 469 and the regulations thereunder, as materially participating in an activity for the taxable year if and only if—

(1) The individual participates in the activity for more than 500 hours during such year;

(2) The individual's participation in the activity for the taxable year constitutes substantially all of the

participation in such activity of all individuals (including individuals who are not owners of interests in the activity) for such year;

(3) The individual participates in the activity for more than 100 hours during the taxable year, and such individual's participation in the activity for the taxable year is not less than the participation in the activity of any other individual (including individuals who are not owners of interests in the activity) for such year;

(4) The activity is a significant participation activity (within the meaning of paragraph (c) of this section) for the taxable year, and the individual's aggregate participation in all significant participation activities during such year exceeds 500 hours;

(5) The individual materially participated in the activity (determined without regard to this paragraph (a)(5)) for any five taxable years (whether or not consecutive) during the ten taxable years that immediately precede the taxable year;

(6) The activity is a personal service activity (within the meaning of paragraph (d) of this section), and the individual materially participated in the activity for any three taxable years (whether or not consecutive) preceding the taxable year; or

(7) Based on all of the facts and circumstances (taking into account the rules in paragraph (b) of this section), the individual participates in the activity on a regular, continuous, and substantial basis during such year.

(b) *Facts and circumstances*—(1) *In general.* [Reserved]

(2) *Certain participation insufficient to constitute material participation under this paragraph (b)*—(i) *Participation satisfying standards not contained in section 469.* Except as provided in section 469(h)(3) and paragraph (h)(2) of this section (relating to certain retired individuals and surviving spouses in the case of farming activities), the fact that an individual satisfies the requirements of any participation standard (whether or not referred to as "material participation") under any provision (including sections 1402 and 2032A and the regulations thereunder) other than section 469 and the regulations thereunder shall not be taken into account in determining whether such individual materially participates in any activity for any taxable year for purposes of section 469 and the regulations thereunder.

(ii) *Certain management activities.* An individual's services performed in the management of an activity shall not be taken into account in determining whether such individual is treated as materially participating in such activity for the taxable year under paragraph (a)(7) of this section unless, for such taxable year—

(A) No person (other than such individual) who performs services in connection with the management of the activity receives compensation described in section 911(d)(2)(A) in consideration for such services; and

(B) No individual performs services in connection with the management of the activity that exceed (by hours) the amount of such services performed by such individual.

(iii) *Participation less than 100 hours.* If an individual participates in an activity for 100 hours or less during the taxable year, such individual shall not be treated as materially participating in such activity for the taxable year under paragraph (a)(7) of this section.

(c) *Significant participation activity*—(1) *In general.* For purposes of paragraph (a)(4) of this section, an activity is a significant participation activity of an individual if and only if such activity—

(i) Is a trade or business activity (within the meaning of § 1.469–1T(e)(2)) in which the individual significantly participates for the taxable year; and

(ii) Would be an activity in which the individual does not materially participate for the taxable year if material participation for such year were determined without regard to paragraph (a)(4) of this section.

(2) *Significant participation.* An individual is treated as significantly participating in an activity for a taxable year if and only if the individual participates in the activity for more than 100 hours during such year.

(d) *Personal service activity.* An activity constitutes a personal service activity for purposes of paragraph (a)(6) of this section if such activity involves the performance of personal services in—

(A) The fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting; or

(B) Any other trade or business in which capital is not a material income-producing factor.

(e) *Treatment of limited partners*—(1) *General rule.* Except as otherwise provided in this paragraph (e), an individual shall not be treated as materially participating in any activity of a limited partnership for purposes of applying section 469 and the regulations thereunder to—

(i) The individual's share of any income, gain, loss, deduction, or credit from such activity that is attributable to a limited partnership interest in the partnership; and

(ii) Any gain or loss from such activity recognized upon a sale or exchange of such an interest.

(2) *Exceptions.* Paragraph (e)(1) of this section shall not apply to an individual's share of income, gain, loss, deduction, and credit for a taxable year from any activity in which the individual would be treated as materially participating for the taxable year under paragraph (a)(1), (5), or (6) of this section if the individual were not a limited partner for such taxable year.

(3) *Limited partnership interest*—(i) *In general.* Except as provided in paragraph (e)(3)(ii) of this section, for purposes of section 469(h)(2) and this paragraph (e), a partnership interest shall be treated as a limited partnership interest if—

(A) Such interest is designated a limited partnership interest in the limited partnership agreement or the certificate of limited partnership, without regard to whether the liability of the holder of such interest for obligations of the partnership is limited under the applicable State law; or

(B) The liability of the holder of such interest for obligations of the partnership is limited, under the law of the State in which the partnership is organized, to a determinable fixed amount (for example, the sum of the holder's capital contributions to the partnership and contractural obligations to make additional capital contributions to the partnership).

(ii) *Limited partner holding general partner interest.* A partnership interest of an individual shall not be treated as a limited partnership interest for the individual's taxable year if the individual is a general partner in the partnership at all times during the partnership's taxable year ending with or within the individual's taxable year (or the portion of the partnership's taxable year during which the individual (directly or indirectly) owns such limited partnership interest).

(f) *Participation*—(1) *In general.* Except as otherwise provided in this paragraph (f), any work done by an individual (without regard to the capacity in which the individual does such work) in connection with an activity in which the individual owns (directly or indirectly, other than through a C corporation) an interest at the time the work is done shall be treated for purposes of this section as participation of such individual in the activity.

(2) *Exceptions*—(i) *Certain work not customarily done by owners.* Work done

in connection with an activity shall not be treated as participation in the activity for purposes of this section if—

(A) Such work is not of a type that is customarily done by an owner of such an activity; and

(B) One of the principal purposes for the performance of such work is to avoid the disallowance, under section 469 and the regulations thereunder, of any loss or credit from such activity.

(ii) *Participation as an investor*—(A) *In general.* Work done by an individual in the individual's capacity as an investor in an activity shall not be treated as participation in the activity for purposes of this section unless the individual is directly involved in the day-to-day management or operations of the activity.

(B) *Work done in individual's capacity as an investor.* For purposes of this paragraph (f)(2)(ii), work done by an individual in the individual's capacity as an investor in an activity includes—

(*1*) Studying and reviewing financial statements or reports on operations of the activity;

(*2*) Preparing or compiling summaries or analyses of the finances or operations of the activity for the individual's own use; and

(*3*) Monitoring the finances or operations of the activity in a non-managerial capacity.

(3) *Participation of spouse.* In the case of any person who is a married individual (within the meaning of section 7703) for the taxable year, any participation by such person's spouse in the activity during the taxable year (without regard to whether the spouse owns an interest in the activity and without regard to whether the spouses file a joint return for the taxable year) shall be treated, for purposes of applying section 469 and the regulations thereunder to such person, as participation by such person in the activity during the taxable year.

(4) *Methods of proof.* The extent of an individual's participation in an activity may be established by any reasonable means. Contemporaneous daily time reports, logs, or similar documents are not required if the extent of such participation may be established by other reasonable means. Reasonable means for purposes of this paragraph may include but are not limited to the identification of services performed over a period of time and the approximate number of hours spent performing such services during such period, based on appointment books, calendars, or narrative summaries.

(g) *Material participation of trusts and estates.* [Reserved]

(h) *Miscellaneous rules*—(1) *Participation of corporations.* For rules relating to the participation in an activity of a personal service corporation (within the meaning of § 1.468–1T(g)(2)(i)) or a closely held corporation (within the meaning of § 1.469–1T(g)(2)(ii)), see § 1.469–1T(g)(3).

(2) *Treatment of certain retired farmers and surviving spouses of retired or disabled farmers.* An individual shall be treated as materially participating for a taxable year in any trade or business activity of farming it paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity had the individual died during such taxable year.

(i) [Reserved]

(j) *Material participation for taxable years beginning before January 1, 1987.* In any case in which it is necessary to determine whether an individual materially participated in any activity for a taxable year beginning before January 1, 1987 (other than a taxable year of a partnership, S corporation, estate, or trust ending after December 31, 1986), such determination shall be made without regard to paragraphs (a)(2) through (7) of this section.

(k) *Examples.* The following examples illustrate the application of this section:

Example (1). A, a calendar year individual, owns all of the stock of X, a C corporation. X is the general partner, and A is the limited partner, in P, a calendar year partnership. P has a single activity, a restaurant, which is a trade or business activity (within the meaning of § 1.469–1T(e)(2)). During the taxable year, A works for an average of 30 hours per week in connection with P's restaurant activity. Under paragraphs (a)(1) and (e)(2) of this section, A is treated as materially participating in the activity for the taxable year because A participates in the restaurant activity during such year for more than 500 hours. In addition, under § 1.469–1T(g)(3)(i), A's participation will cause X to be treated as materially participating in the restaurant activity.

Example (2). The facts are the same as in example (1), except that the partnership agreement provides that P's restaurant activity is to be managed by X, and A's work in the activity is performed pursuant to an employment contract between A and X. Under paragraph (f)(1) of this section, work done by A in connection with the activity in any capacity is treated as participation in the activity by A. Accordingly, the conclusion is the same as in example (1). The conclusion would be the same if A owned no stock in X at any time, although in that case A's participation would not be taken into account in determining whether X materially participates in the restaurant activity.

Example (3). B, an individual, is employed fulltime as a carpenter. B also owns an interest in a partnership which is engaged in a van conversion activity, which is a trade or business activity (within the meaning of § 1.469–1T(e)(2)). B and C, the other partner, are the only participants in the activity for the taxable year. The activity is conducted entirely on Saturdays. Each Saturday throughout the taxable year, B and C work for eight hours in the activity. Although B does not participate in the activity for more than 500 hours during the taxable year, under paragraph (a)(3) of this section, B is treated for such year as materially participating in the activity because B participates in the activity for more than 100 hours during the taxable year, and B's participation in the activity for such year is not less than the participation of any other person in the activity for such year.

Example (4). C, an individual, is employed full-time as an accountant. C also owns interests in a restaurant and a shoe store. The restaurant and shoe store are trade or business activities (within the meaning of § 1.469–1T(e)(2)) that are treated as separate activities under the rules to be contained in § 1.469–4T. Each activity has several full-time employees. During the taxable year, C works in the restaurant activity for 400 hours and in the shoe store activity for 150 hours. Under paragraph (c) of this section, both the restaurant and shoe store activities are significant participation activities of C for the taxable year. Accordingly, since C's aggregate participation in the restaurant and shoe store activities during the taxable year exceeds 500 hours, C is treated under paragraph (a)(4) of this section as materially participating in both activities.

Example (5). In 1990, D, an individual, acquires stock in an S corporation engaged in a trade or business activity (within the meaning of § 1.469–1T(e)(2)). For every taxable year from 1990 through 1994, D is treated as materially participating (without regard to paragraph (a)(5) of this section) in the activity. D retires from the activity at the beginning of 1995, and would not be treated as materially participating in the activity for 1995 and subsequent taxable years if material participation for such years were determined without regard to paragraph (a)(5) of this section. Under paragraph (a)(5) of this section, however, D is treated as materially participating in the activity for taxable years 1995 through 1999 because D materially participated in the activity (determined without regard to paragraph (a)(5) of this section) for five taxable years during the ten taxable years that immediately precede each of those years. D is not treated under paragraph (a)(5) of this section as materially participating in the activity for taxable years after 1999 because of such years D has not materially participated in the activity (determined without regard to paragraph (a)(5) of this section) for five of the ten immediately preceding taxable years.

Example (6). The facts are the same as in example (5), except that D does not acquire any stock in the S corporation until 1994. Under paragraph (f)(1) of this section, D is not treated as participating in the activity for any taxable year prior to 1994 because D does not own as interest in the activity for any such taxable year. Accordingly, D materially

participates in the activity for only one taxable year prior to 1995, and D is not treated under paragraph (a)(5) of this section as materially participating in the activity for 1995 or subsequent taxable years.

Example (7). (i) E, a married individual filing a separate return for the taxable year, is employed full-time as an attorney. E also owns an interest in a professional football team that is a trade or business activity (within the meaning of § 1.469–1T(e)(2)). E does no work in connection with this activity. E anticipates that, for the taxable year, E's deductions from the activity will exceed E's gross income from the activity and that, if E does not materially participate in the activity for the taxable year, part or all of F's passive activity loss for the taxable year will be disallowed under § 1.469–1T(a)(1)(i). Accordingly, E pays E's spouse to work as an office for an average of 15 hours per week during the taxable year.

(ii) Under paragraph (f)(3) of this section any participation in the activity by E's spouse is treated as participation in the activity by E. However, under paragraph (f)(2)(i) of this section, the work done by E's spouse is not treated as participation in the activity because work as an office receptionist is not work of a type customarily done by an owner of a football team, and one of E's principal purposes for paying E's spouse to do this work is to avoid the disallowance under § 1.469–1T(a)(1)(i) of E's passive activity loss. Accordingly, E is not treated as participating in the activity for the taxable year.

Example (8). (i) F, an individual, owns an interest in a partnership that feeds and sells cattle. The general partner of the partnership periodically mails F a letter setting forth certain proposed actions and decisions with respect to the cattle-feeding operation. Such actions and decisions include, for example, what kind of feed to purchase, how much to purchase, and when to purchase it, how often to feed cattle, and when to sell cattle. The letters explain the proposed actions and decisions, emphasize that taking or not taking a particular action or decision is solely within the discretion of F and other partners, and ask F to indicate a decision with respect to each proposed action by answering certain questions. The general partner receives a fee that constitutes earned income (within the meaning of section 911 (d)(2)(A)) for managing the cattle-feeding operation. F is not treated as materially participating in the cattle-feeding operation under paragraph (a)(1) through (6) of this section.

(ii) F's only participation in the cattle-feeding operation is to make certain managerial decisions. Under paragraph (b)(2)(ii) of this section, such management services are not taken into account in determining whether the taxpayer is treated as materially participating in the activity for a taxable year under paragraph (a)(7) of this section, if any other person performs services in connection with the management of the activity and receives compensation described in section 911(d)(2)(A) for such services. Therefore, F is not treated as materially participating for the taxable year in the cattle-feeding operation.

§ 1.469–6T Treatment of losses upon certain dispositions (temporary). [Reserved]

§ 1.469–7T Treatment of self-charged items of income and expense (temporary). [Reserved]

§ 1.469–8T Application of section 469 and the regulations thereunder to trusts, estates, and their beneficiaries (temporary). [Reserved]

§ 1.469–9T I89Treatment of income, deductions, and credits from certain rental real estate activities (temporary). [Reserved]

§ 1.469–10T Application of section 469 to publicly traded partnerships (temporary). [Reserved]

§ 1.469–11T Effective date and transition rules (temporary).

(a) *Effective date*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, section 469 and the regulations thereunder apply for taxable years beginning after December 31, 1986.

(2) *Application of certain income recharacterization rules*—(i) *In general.* No amount of gross income shall be treated under § 1.469–2T(f)(3) through (7) as income that is not from a passive activity for any taxable year of the taxpayer beginning before January 1, 1988.

(ii) *Property rented to a nonpassive activity.* In applying § 1.469–2T(f)(6) to a taxpayer's rental of an item of property, the taxpayer's net rental activity income (within the meaning of § 1.469–2T(f)(9)(iv)) from such property for any taxable year beginning after December 31, 1987, shall not include the portion of such income (if any) that is attributable to the rental of such item of property pursuant to a written binding contract entered into before February 19, 1988.

(3) *Qualified low-income housing projects.* For a transitional rule concerning the application of section 469 to losses from qualified low-income housing projects, see section 502 of the Tax Reform Act of 1986.

(4) *Effect of events occurring in years prior to 1987.* The treatment for a taxable year beginning after December 31, 1986, of any item of income, gain, loss, deduction, or credit as an item of passive activity gross income, passive activity deduction, or credit from a passive activity, shall be determined as if section 469 and the regulations thereunder had been in effect for taxable years beginning before January 1, 1987, but without regard to any passive activity loss or passive activity credit that would have been disallowed for any taxable year beginning before January 1, 1987, if section 469 and the regulations thereunder had been in effect for such year. For example, in determining whether a taxpayer materially participates in an activity under § 1.469–5T(a)(5) (relating to taxpayers who have materially participated in an activity for five of the ten immediately preceding taxable years) for any taxable year beginning after December 31, 1986, the taxpayer's participation in the activity for all prior taxable years (including taxable years beginning before 1987) is taken into account. See § 1.469–5T(j) (relating to the determination of material participation for taxable years beginning before January 1, 1987).

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

Example (1). A, a calendar year individual, is a partner in a partnership with a taxable year ending on January 31. During its taxable year ending January 31, 1987, the partnership was engaged in a single activity involving the conduct of a trade or business. In applying section 469 and the regulations thereunder to A for calendar year 1987, A's distributive share of partnership items for the partnership's taxable year ending January 31, 1987, is taken into account. Therefore, under § 1.469–2T(e)(1) and paragraph (a)(4) of this section, A's participation in the activity throughout the partnership's taxable year beginning February 1, 1986, and ending January 31, 1987, is taken into account for purposes of determining the character under section 469 of the items of gross income, deduction, and credit allocated to A for the partnership's taxable year ending January 31, 1987.

Example (2). B, a calendar year individual, is a beneficiary of a trust described in section 651 that has a taxable year ending January 31. The trust conducts a rental activity (within the meaning of § 1.469–1T(e)(3)). Because the trust's taxable year ending January 31, 1987, began before January 1, 1987, section 469 and the regulations thereunder do not apply to the trust for such year. Section 469 and the regulations thereunder do apply, however, to B for B's calendar year 1987. Therefore, income of the trust from the rental activity for the trust's taxable year ending January 31, 1987, that is included in B's gross income for 1987 is taken into account in applying section 469 to B for 1987.

(b) *Transitional rule for pre-enactment loss and pre-enactment credit*—(1) *In general.* For taxable years beginning after December 31, 1986, and before January 1, 1991, § 1.469–1T(a)(1) shall not apply to—

(i) An amount of the passive activity loss equal to the applicable percentage of the pre-enactment loss; and

(ii) An amount of the passive activity credit equal to the applicable percentage of the pre-enactment credit.

(2) *Applicable percentage.* For purposes of this paragraph (b), the

applicable percentage of the pre-enactment loss or the pre-enactment credit for a taxable year shall be determined in accordance with the following table:

In the case of a taxable year beginning in:	The applicable percentage is:
1987	65
1988	40
1989	20
1990	10

(3) *Pre-enactment loss.* The pre-enactment loss for any taxable year is the lesser of—

(i) The amount of the passive activity loss that would be disallowed for the taxable year under § 1.469–1T(a)(1)(i) if this section were disregarded; and

(ii) The amount of the passive activity loss that would be disallowed for the taxable year under § 1.469–1T(a)(1)(i) if this section were disregarded and the following items were not taken into account:

(A) Any deduction treated as a deduction from an activity for the taxable year under § 1.469–1T(f)(4); and

(B) Any item from an interest (other than a pre-enactment interest) in any passive activity.

(4) *Pre-enactment credit.* The pre-enactment credit for any taxable year is the lesser of—

(i) The amount of the passive activity credit that would be disallowed for the taxable year under § 1.469–1T(a)(1)(ii) if this section were disregarded; and

(ii) The amount of the passive activity credit that would be disallowed for the taxable year under § 1.469–1T(a)(1)(ii) if this section were disregarded and the following items were not taken into account:

(A) Any deduction or credit treated as a deduction or credit from an activity for the taxable year under § 1.469–1T(f)(4); and

(B) Any item from an interest (other than a pre-enactment interest) in a passive activity.

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

Example (1). A, an individual, owns interest in two passive activities, X and Y. A's interest in activity X is a pre-enactment interest (within the meaning of paragraph (c) of this section), while A's interest in activity Y is not a pre-enactment interest. For 1987 A has a $10,000 loss from activity X and $9,000 of income from activity Y. The amount determined under paragraph (b)(3)(i) of this section is $1,000. The amount determined under paragraph (b)(3)(ii) of this section is $10,000 Therefore, A's pre-enactment loss for 1987 is $1,000. Accordingly, § 1.469–1T(a)(1)(i) does not apply to $650 ($1,000 × .65) of A's $1,000 passive activity loss for 1987.

Example (2). (i) B, an individual, owns an interest in one passive activity, and B's interest in the activity is a pre-enactment interest (within the meaning of paragraph (c) of this section). For 1987 and 1988, B has the following passive activity gross income and passive activity deductions from the activity:

	1987	1988
Gross income	$20,000	$20,000
Deductions	($50,000)	($40,000)

(ii) Under § 1.469–2T(b), B's passive activity loss for 1987 is $30,000 ($50,000 of passive activity deductions minus $20,000 of passive activity gross income). Under paragraph (b)(3) of this section, B's pre-enactment loss for 1987 is $30,000. Accordingly, under paragraphs (b) (1) and (2) of this section, § 1.469–1T(a)(1)(i) does not apply to $19,500 ($30,000 × .65) of B's $30,000 passive activity loss for 1987. Under § 1.469–1T(a)(1)(i), $10,500 of B's loss for 1987 ($30,000 × .35) is disallowed. Under § 1.469–1T(f) (2) and (4), the disallowed loss is allocated among deductions from the activity, and the disallowed deductions are treated as deductions from the activity for 1988.

(iii) For 1988, B's pre-enactment loss is computed as shown in the following table:

	(b)(3)(i)	(b)(3)(ii)
Gross income	$20,000	$20,000
Current deductions	(40,000)	(40,000)
§ 1.469–1T(f)(4)	(10,500)	-0-
Net loss	($30,500)	($20,000)

Therefore, B's pre-enactment loss for 1988 is $20,000.

(iv) Under paragraph (b)(2) of this section, the applicable percentage for 1988 is 40 percent. Therefore, under paragraph (b)(1) of this section § 1.469–1T(a)(1)(i) does not apply to $8,000 ($20,000 × .40) of B's $30,500 passive activity loss for 1988.

Example (3). (i) C, an individual, owns interests in three passive activities, R, S, and T. C's interest in each activity is a pre-enactment interest. For 1987 and 1988, C's gross income, deductions, and net income (loss) from each of the three activities are as follows:

	R	S	T
1987:			
Gross income	$8,000	$5,000	$2,000
Deductions	(9,000)	(7,000)	(1,400)
Net income (loss)	($1,000)	($2,000)	$600
1988:			
Gross income	$7,000	$6,000	$2,000
Deductions	(8,000)	(4,500)	(3,000)
Net income (loss)	($1,000)	$1,500	($1,000)

(ii) Under § 1.469–2T(b), C's passive activity loss for 1987 is $2,400 ($17,400 of passive activity deductions less $15,000 of passive activity gross income). Under paragraph (b)(3) of this section, C's pre-enactment loss for 1987 is $2,400. Accordingly, under paragraph (b)(1) and (2) of this section, § 1.469–1T (a)(1)(i) does not apply to $1,560 ($2,400 × .65) of C's passive activity loss for 1987. Under § 1.469–1T (a)(1)(i), $840 of C's passive activity loss for 1987 ($2,400 x .35) is disallowed.

(iii) Under § 1.469–1T (f)(2)(i), since a portion of C's passive activity loss for 1987 is disallowed, a ratable portion of the loss from each of C's activities that has a loss for 1987 (activity R and activity S) is disallowed for 1987. Accordingly, $280 of the 1987 loss from activity R ($840 x $1,000/$3,000) and $560 of the 1987 loss from activity S ($840 × $2,000/$3,000) is disallowed for 1987. Under § 1.469–1T (f)(2) and (4), corresponding portions of the deductions from each activity are disallowed for 1987 and treated as deductions from activities R and S, respectively, for 1988. The deductions that are disallowed for 1987 and treated as deductions for 1988 are taken into account under paragraph (b)(3)(i) but not paragraph (b)(3)(ii) of this section. Thus, the amounts determined under paragraphs (b)(3)(i) and (b)(3)(ii) of this section for 1988 are as follows:

Activity	(b)(3)(i)	(b)(3)(ii)
R	($1,280)	($1,000)
S	940	1,500
T	(1,000)	(1,000)
Total	($1,340)	($500)

Therefore, C's pre-enactment loss for 1988 is $500.

(iv) Under paragraph (b)(2) of this section, the applicable percentage for 1988 is 40 percent. Therefore, under paragraph (b)(1) of this section, § 1.469–1T (a)(1)(i) does not apply to $200 ($500 × .40) of C's $1,340 passive activity loss for 1988.

Example (4). (i) D, an individual, has interests in there passive activities, X, Y, and Z. Activities X and Y are rental real estate activities (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) in which D actively participates (within the meaning of section 469(i) and the rules to be contained in § 1.469–9T) for the taxable year. D's interest in activity X is a pre-enactment interest, and D's interest in activity Y is not a pre-enactment interest. Activity Z is not a rental real estate activity, and D's interest in activity Z is not a pre-enactment interest. The amount of income (loss) from each activity for the taxable year is as follows:

Activity	Income (loss)
X (pre-enactment rental)	($40,000)
Y (other rental)	$30,000
Z (other non-rental)	($20,000)

(ii) The amount determined under paragraph (b)(3)(ii) of this section is computed by applying section 469 to D as if D's only interests in passive activities were D's pre-enactment interests in such activities. If D's only interests in passive activities were D's pre-enactment interests in such activities, the amount to which § 1.469–1T (a)(1)(i) would not apply, by reason of section 469(i) and the rules to be contained in § 1.469–9T, would be $25,000. Taking into account all of D's interests in passive activities, the amount to which § 1.469–1T (a)(1)(i) would not apply, by reason of section 469(i) and the rules to be contained in § 1.469–9T, is $10,000. Accordingly, the amounts determined under paragraph (b)(3)(i) and (b)(3)(ii) of this section for the taxable year are as follows:

Activity	(b)(3)(i)	(b)(3)(ii)
X	($40,000)	($40,000)
Y	$30,000	
Z	($20,000)	
Subtotal	($30,000)	($40,000)
§ 469(i) allowance	$10,000	$25,000
Total	($20,000)	($15,000)

Therefore, D's pre-enactment loss for the taxable year is $15,000.

Example (5). E, an individual, has for the taxable year the following items of income, deduction, and credit from passive activities:

	Pre-enactment interests	Other interests	Total
Income (deductions)	$100	($1,00)	-0-
Credits	28	28	$56

For the taxable year, E is subject to tax at a marginal rate of 28 percent. Under § 1.469–3T (d), E's regular tax liability allocable to passive activities for the taxable year is zero. If, however, the only interests in passive activities taken into account were the pre-enactment interests (i.e., if the $100 loss were disregarded), E's regular tax liability allocable to passive activities for the taxable year would be $28. Thus, the amounts determined under paragraphs (b)(4)(i) and (b)(4)(ii) of this section are as follows:

(b)(4)(i)	(b)(4)(ii)
$56	-0-

Therefore, E's pre-enactment credit for the taxable year is zero, and § 1.469–1T (a)(1)(ii) applies to E's $56 passive activity credit for the taxable year.

(c) *Definition of pre-enactment interest*—(1) *Geneal rule.* Except as otherwise provided in this paragraph (c), the term "pre-enactment interest" means a qualified interest in a pre-enactment activity.

(2) *Qualified interest*—(i) *In general.* For purposes of this paragraph (c), a qualified interest in an activity is any interest in an activity that was—

(A) Held by the taxpayer on October 22, 1986, and at all times thereafter (but only if the activity existed on October 22, 1986); or

(B) Acquired by the taxpayer after October 22, 1986, directly or indirectly, pursuant to one or more written binding contracts to which the taxpayer was a party on October 22, 1986, and held by the taxpayer at all times after such acquisistion.

See paragraph (c)(7) of this section for rules for determining whether a taxpayer was a party on October 22, 1986, to a written binding contract.

(ii) *Stock in a C corporation.* For purposes of this paragraph (c)(2), stock in a C corporation is not treated as an interest in any activity of the corporation. The following example illustrates the application of this paragraph (c)(2)(ii):

Example. On October 22, 1986, the taxpayer owned all of the stock of a C corporation that conducted a single activity. On December 31, 1986, the corporation liquidated and distributed to the taxpayer the assets used in the activity. Under this paragraph (c)(2)(ii), the taxpayer does not have a qualified interest in the corporation's activity as a result of the liquidation. The result would be the same if, on December 31, 1986, instead of liquidating, the corporation elected under section 1362*(a) to be an S corporation.*

(3) *Pre-enactment activity*—(i) *In general.* For purposes of this paragraph (c), an activity is a pre-enactment activity if—

(A) The activity was being conducted by any person on October 22, 1986; or

(B) At least 50 percent (by value) of the property used in the activity during the taxable year was—

(*1*) In existence or under construction on August 16, 1986; or

(*2*) Acquired or constructed by any person pursuant to a written binding contract (without regard to whether the taxpayer or any person related to the taxpayer was a party to such contract) in effect on August 16, 1986.

(ii) *Character before 1987 irrelevant.* For purposes of this paragraph (c), an activity may be treated as a pre-enactment activity without regard to whether such activity would have been a passive activity of the taxpayer for any taxable year beginning before January 1, 1987, had section 469 and the regulations thereunder been in effect for such year.

(4) *Examples.* The following examples illustrate the application of paragraphs (c) (1), (2), and (3) of this section:

Example (1). On October 22, 1986, the taxpayer owned an interest in property used as a personal residence. After October 22, 1986, the taxpayer ceased to use the property as a personal residence and began to use it in a rental activity. The rental activity is a pre-enactment activity (within the meaning of paragraph (c)(3) of this section) because the property used in the rental activity was in existence on August 16, 1986. The taxpayer did not hold any interest in the rental activity on October 22, 1986, however, because the activity did not exist on that date. In addition, the taxpayer did not acquire an interest in the activity after October 22, 1986, pursuant to a written binding contract to which the taxpayer was a party on such date. Accordingly, the taxpayer's interest in the rental activity is not a qualified interest (within the meaning of paragraph (c)(2) of this section), and the taxpayer does not have a pre-enactment interest in the rental activity.

Example (2). The taxpayer owns an interest in a partnership, which owns property used in a rental activity. The taxpayer acquired the partnership interest pursuant to a written binding contract to which the taxpayer was a party on October 22, 1986. The partnership acquired its interest in the rental property pursuant to written binding contracts to which the partnership was a party on October 22, 1986. Construction of the property used in the rental activity commenced prior to August 16, 1986. Under paragraph (c)(7)(ii) of this section, the taxpayer is treated as a party to the contracts to which the partnership was a party on October 22, 1986. Therefore, the taxpayer's interest in the partnership's rental activity is a qualified interest (within the meaning of paragraph (c)(2) of this section) because the taxpayer is treated as acquiring an interest in the partnership's rental activity pursuant to written binding contracts to which the taxpayer was party on October 22, 1986. Since the property used in the rental activity was under construction on August 16, 1986, the partnership's rental activity is a pre-enactment activity (within the meaning of paragraph (c)(3) of this section). Accordingly, the taxpayer's interest in the partnership's rental activity is a pre-enactment interest.

Example (3). The facts are the same as in example (2), except that the partnership acquired the property after October 22, 1986, pursuant to a contract entered into after October 22, 1986. The taxpayer's interest in the partnership's rental activity is not a pre-enactment interest because such interest was not acquired pursuant to written binding contracts to which the taxpayer was a party on October 22, 1986.

Example (4). The taxpayer owned a pre-enactment interest in an activity on October 22, 1986. After that date, the taxpayer died,

and the decedent's interest in the activity passed to the decedent's estate. Since a decedent and the decedent's estate are not the same taxpayer, the estate must independently satisfy the requirements for a pre-enactment interest regardless of the fact that the decedent had a pre-enactment interest in the activity. Since the activity was being conducted by the decedent on October 22, 1986, the activity is a pre-enactment activity (within the meaning of paragraph (c)(3) of this section). Since, however, the estate did not hold any interest in the activity on October 22, 1986, the estate does not have a qualified interest in the activity (within the meaning of paragraph (c)(2) of this section). Accordingly, the estate does not have a pre-enactment interest in the activity.

(5) *Effect of changes in a taxpayer's interest in a pre-enactment activity*—(i) *In general.* If the taxpayer's share for a taxable year of an item of income, gain, loss, deduction, or credit from a pre-enactment activity was increased or decreased at any time after October 22, 1986, and prior to the end of such taxable year (other than pursuant to a written binding contract to which the taxpayer was a party on October 22, 1986), the share of such item that is attributable to the taxpayer's pre-enactment interest in such activity shall be determined by taking into account—

(A) The taxpayer's share for such taxable year of such item as of October 22, 1986; reduced by

(B) The greatest amount at any time subsequent to October 22, 1986, by which the sum of all the decreases in the taxpayer's share for such year of such item (other than decreases pursuant to a written binding contract to which the taxpayer was a party on October 22, 1986) exceeds the sum of all the increases in the taxpayer's share for such year of such item (other than increases pursuant to a written binding contract to which the taxpayer was a party on October 22, 1986).

For purposes of this paragraph (c)(5)(i), the taxpayer's share of an item as of October 22, 1986, is determined by taking into account any written binding contract to which the taxpayer was a party on October 22, 1986.

(ii) *Partnership terminations under section 708(b)(1)(B).* A taxpayer's share for a taxable year of an item of income, gain, loss, deduction, or credit from a pre-enactment activity conducted by a partnership shall not be treated as having increased or decreased at any time after October 22, 1986, solely because the partnership is treated as terminating at any time after such date under section 708(b)(1)(B).

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

Example (1). On October 22, 1986, an individual owned a 10 percent interest in a pre-enactment activity. After October 22, 1986, the taxpayer acquires an additional five percent interest in the activity pursuant to a contract entered into after October 22, 1986. Under this paragraph (c)(5), only the 10 percent interest in the activity the taxpayer owned on October 22, 1986, is a pre-enactment interest.

Example (2). On October 22, 1986, individuals A and B each owned a rental activity. After October 22, 1986, A and B contribute their rental activities to a partnership in exchange for which each receives a 50 percent interest in all items of income, gain, loss, deduction, and credit of the partnership. Under paragraph (c)(5)(i) of this section, A's 50 percent interest in each partnership item attributable to the rental activity contributed by A is attributable to a pre-enactment interest. None of A's interest in the partnership items attributable to the rental activity contributed by B is attributable to a pre-enactment interest.

Example (3). The facts are the same as in example (2), except that under the partnership agreement the items of income, gain, loss, deduction, and credit attributable to the rental activity A contributed to the partnership are allocated 80 percent to A and 20 percent to B. Under paragraph (c)(5)(i) of this section, A's 80 percent interest in each partnership item attributable to the rental activity contributed by A is attributable to a pre-enactment interest.

Example (4). The facts are the same as in example (3) except that on January 1, 1988, the partnership liquidates, distributing to A the rental activity contributed by A to the partnership. Under paragraph (c)(5)(i) of this section, only 80 percent of A's interest in the rental activity distributed to A is a pre-enactment interest.

Example (5). On October 22, 1986, an individual is the general partner in a limited partnership. Under the partnership agreement in effect on that date, the taxpayer is allocated one percent of each item of partnership income, gain, loss, deduction, and credit for 1987 and 10 percent of each such item for 1988. Since the increase was provided for in a written binding contract to which the taxpayer was a party on October 22, 1986, the increase in the taxpayer's share of each item of partnership income, gain, loss, deduction, and credit is taken into account, under paragraph (c)(5)(i) of this section, as income, gain, loss, deduction, and credit from a pre-enactment interest.

Example (6). The facts are the same as in example (5) except that the partnership agreement is amended on November 30, 1986. The amendment decreases the taxpayer's share of partnership depreciation for 1987 from 10 percent to five percent, but does not affect the partner's share of partnership depreciation for any other year. Since the taxpayer's share of partnership depreciation for 1988 is not decreased by the amendment, the result, for 1988, is the same as in example (5). For 1987, however, only five percent of the partnership depreciation is attributable to the taxpayer's pre-enactment interest even if, after November 30, 1986, another amendment to the partnership agreement restores the taxpayer's 10 percent share of partnership depreciation for 1987.

Example (7). (i) A and B, calendar year individuals, own all the stock of X, a calendar year S corporation. On October 22, 1986, A and B each own 50 shares of X stock. On July 1, 1987, X issues an additional 100 shares of stock to B (but does not issue any additional stock to A). On December 1, 1987, A purchases 70 shares of X stock from B. Thus, A and B have the following shares of items of income, gain, loss, deduction, and credit from activities of X:

Period	A's share	B's share
10/22/86–6/30/87	50%	50%
7/1/87–11/30/87	25%	75%
12/1/87–	60%	40%

(ii) Under paragraph (c)(5)(i) of this section, A and B each have a 50 percent share of each item of X as of October 22, 1986. Since there are no increases or decreases in their shares before June 30, 1987, their 50 percent shares of items of X assigned to the period from January 1, 1987, through June 30, 1987, are attributable to their pre-enactment interests.

(iii) As a result of the decrease in A's share on June 30, 1987, only a 25 percent share of the items of X assigned to the period from July 1, 1987, through November 30, 1987, is attributable to A's pre-enactment interest. In addition, notwithstanding the increase in B's share, only a 50 percent share of such items (B's share as of October 22, 1986) is attributable to B's pre-enactment interest.

(iv) As a result of the decrease in B's share on November 30, 1987, only a 40 percent share of the items of X assigned to the period from December 1, 1987, through December 31, 1987, is attributable to B's pre-enactment interest. In addition, notwithstanding the increase in A's share, only a 25 percent share of such items (A's share as of October 22, 1986, reduced by the amount of the decrease in A's share on June 30, 1987) is attributable to A's pre-enactment interest.

(6) *Special rule for beneficiaries of trusts or estates*—(i) *In general.* If a beneficial interest in a trust or estate was held by a taxpayer on October 22, 1986, and at all times thereafter, any income, directly allocable deductions, and credits taken into account by the taxpayer with respect to such interest shall be treated as income, deductions, and credits, respectively, from a pre-enactment interest of the beneficiary if and only if such income, deductions, and credits are from a pre-enactment interest of the trust or estate. For purposes of the preceding sentence, "directly allocable deductions" means—

(A) Depreciation allowable to the beneficiary under section 167(h);

(B) Depletion allowable to the beneficiary under section 611(b)(3); and

(C) Amortization apportioned to the beneficiary under section 642(f).

The following example illustrates the application of this paragraph (c)(6)(i):

Example. The taxpayer is a beneficiary of a trust that conducts a rental activity. The trust's interest in the activity is a pre-enactment interest of the trust. On October 22, 1986, under the trust agreement the trustee had discretion to allocate any amount of the depreciation deductions from the rental activity to the beneficiary. Under this paragraph (c)(6)(i), any depreciation deductions from the rental activity that are allocated to the beneficiary will be treated as deductions attributable to a pre-enactment interest of the beneficiary.

(ii) *Interests distributed to beneficiaries.* A beneficiary of a trust or estate to whom the trust or estate distributes an interest in an activity shall be treated as having a pre-enactment interest in the activity by reason of such distribution if and only if such interest was a pre-enactment interest of the trust or estate, and the beneficiary held a beneficial interest in the trust or estate on October 22, 1986, and at all times thereafter.

(7) *Written binding contract*—(i) *In general.* A contract shall be treated as a written binding contract of a person for purposes of this section if and only if the contract is enforceable against such person under the applicable State law and does not limit damages to a specified amount (e.g., by use of a liquidated damages provision). For purposes of the preceding sentence, a contractual provision that limits damages to an amount equal to five percent or more of the total contract price is not treated as limiting damages. In general, a contract is binding upon a person even if it is subject to a condition, as long as the condition is not within the control of such person. A contract is not binding on any date with respect to a person if the contract became enforceable against such person only by reason of an assignment occurring after such date. The following example illustrates the application of this paragraph (c)(7)(i):

Example. As of October 22, 1986, the taxpayer had signed a subscription agreement to acquire an interest in a partnership. The taxpayer's obligation to purchase an interest in the partnership was contingent on other persons signing subscription agreements by a particular date after October 22, 1986, to acquire a minimum number of the total interests offered for sale. If the taxpayer acquires an interest in the partnership, such interest will be treated as acquired pursuant to a written binding contract to which the taxpayer was a party on October 22, 1986. Although the taxpayer's obligation to acquire an interest in the partnership was subject to a contingency, the contingency was not within the taxpayer's control.

(ii) *Special rule for contract of partnership or S corporation.* For purposes of this section, a person shall be treated as a party to a contract on October 22, 1986, if on such date such person is a partner in a partnership or a shareholder in an S corporation (or is bound by a written contract to acquire an interest in such partnership or stock in such corporation) which itself is a party to such contract (or is treated under this paragraph (c)(7)(ii) as a party to such contract) on such date.

(iii) *Application of rule to partnership agreements.* A provision of a partnership agreement shall be treated as a binding contract with respect to a partner if the requirements of this paragraph (c)(7) are otherwise satisfied and such partner does not have the power to amend any provision of the partnership agreement without the consent of other partners.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical 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.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: February 12, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-3791 Filed 2-19-88; 4:19 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-14-88]

Limitations on Passive Activity Losses and Credits; 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 the limitations on passive activity losses and passive activity credits. Changes to the applicable tax law were made by the Tax Reform Act of 1986. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Except as otherwise provided in § 1.469–11T, the amendments to the regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a pubic hearing must be delivered or mailed by April 25, 1988.

ADDRESSES: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–14–88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michael J. Grace 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) 566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a T following the section citations) in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to provide rules relating to the limitations on passive activity losses and passive activity credits. The temporary regulations reflect the amendment of the Internal Revenue Code of 1986 by sections 501 and 502 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2233and 2241), which added section 469 (relating to the limitations on passive activity losses and passive activity credits). 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. 88–3791 (T.D. 8175) published in 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 and that 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 proposed regulations 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 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 submitted comments. If a public hearing is held, notice of the time and place will be pblished in the **Federal Register**.

Drafting Information

The principal author of these proposed regualtions is Michael J. Grace of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

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

Income taxes, Accounting, Deferred compensation plans.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–3792 Filed 2–19–88; 4:19 pm]

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federal register

Thursday
February 25, 1988

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Ptilimnium nodosum, and Proposed Threatened Species for Helonias bullata; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Ptilimnium nodosum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Ptilimnium nodosum* (harperella) as an endangered species, under the authority of the Endangered Species Act of 1973, as amended (Act). This annual is a relative of the carrot and occurs in Alabama, Georgia, North and South Carolina, West Virginia, and Maryland. *P. nodosum* has been eliminated from over half of its known historical population sites rangewide. None of the ten currently known viable populations is in Federal ownership or other permanently protected status, although The Nature Conservancy has an easement on one population in West Virginia and is trying to protect populations in other States.

This proposal, if made final, would implement Federal protection provided by the Act for *Ptilimnium nodosum*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by April 25, 1988. Public hearing requests must be received by April 11, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Ecological Services Field Office, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs, Endangered Species Biologist (see **"ADDRESSES"** section) (301/269–5448).

SUPPLEMENTARY INFORMATION

Background

In 1902 Dr. Roland M. Harper discovered a previously unknown plant growing in a shallow pineland pond in Schley County, Georgia. Three years later, Dr. Harper collected what appeared to be a second, closely related species from a rocky stream bed in DeKalb County, Alabama. These plants were named *Harperella nodosa* and *Harperella fluviatilis* respectively, in honor of their discoverer (Rose 1905, 1911). Mathias (1936) noted that despite their very different leaf structure, these plants were not generically distinct from members of the genus *Ptilimnium*. Thus, they became *Ptilimnium nodosum* and *P. fluviatile*, although they are still referred to by the common name, harperella.

In a recent examination of these taxa, Kral (1981) concluded that their observable differences in morphology and phenology were very likely due to environmental factors, rather than to inherent genetic differences. This is supported by the observation that both forms have six chromosome pairs (Easterly 1957). Kral (1981) observed that the riverine form, *P. fluviatile*, is shorter and develops roots at the nodes, probably because the plants are frequently inundated and toppled by swift-flowing water in the stream situations they inhabit. Conversely, the taller, erect and non-proliferous plants referred to as *P. nodosum* occur in the fringe of grass and sedge around ponds, where they are less likely to be knocked down by floodwaters. That these morphological differences were environmentally induced was particularly evident to Kral (1981) in the Little River population of "*P. fluviatile*" in Alabama; there, the plants from the higher seep areas, where flooding is infrequent, were more clearly assignable to the "*P. nodosum*" type. Differences in flowering time between the pond and river forms is also likely due to environmental factors, such as differences in temperature and time of flooding (R. Kral, Vanderbilt University, pers. comm., 1987). Because there is no apparent way to take into account their variation and yet to distinguish the two taxa, Kral (1981) synonymized the two under *P. nodosum*, the earlier name. In this proposed rule, the Service follows Kral's treatment; thus, references to *P. nodosum* will be meant to include *P. fluviatile*, unless otherwise indicated.

P. nodosum, an annual plant, is a member of the carrot family (Apiaceae) that grows to a height of 0.2–1.0 meter. Unlike those of the more common members of this genus, the leaves of *P. nodosum* are reduced to hollow, quill-like structures. The small white flowers occur in heads not unlike those of "Queen Annes lace" (*Daucus carota*), and may appear from May to frost. *P. nodosum* typically occurs in two habitat types: (1) Rocky or gravel shoals and margins of clear, swift-flowing stream sections, and (2) the edges of intermittent pineland ponds or low, wet savannah meadows in the coastal plain (Kral 1983). In Georgia, the only known extant population occurs on a granite outcrop seep. This seemingly atypical setting actually has a water regime not unlike that of more characteristic pond habitat for this plant (Rawinski and Cassin 1986).

Harperella is always found on saturated substrates and readily tolerates periodic, moderate flooding. This tolerance may, in fact, be of key importance to the plant's survival, for few potential competitors are adapted to such water fluctuations. In riverine situations, short-duration spring floods annually scour the gravel bars or rock crevices where *P. nodosum* grows, preventing substantial soil accumulations in which weedy competitors might gain a foothold. When floodwaters subside harperella seeds germinate in shallow, rocky areas and complete their life cycle with their root systems submerged or saturated. Similarly, pond sites are normally full of water in the spring and, depending on the rainfall, often well into the summer. The plants have completed their life cycle by late summer or fall, when the ponds are often devoid of standing water and competing species have moved in. As in the riverine situation, it appears that *P. nodosum* has survived by its adaptation to changing water levels that few other plants can tolerate.

Because of its very specific habitat requirements, harperella can be easily extirpated from an area even by seemingly minor perturbations. In riverine situations, for example, prolonged or intensified flooding, as a result of upstream land use changes, could wash away its substrate and its seed bank. Conversely, reductions or lack of flooding, as from upstream impoundments, could decrease the species' competitive edge over more common streamside plants. In pond situations, ditching and draining for irrigation and/or agriculture would be of obvious detriment to harperella. Conversion to permanent ponds could also eliminate this species. Additional threats facing *P. nodosum* include siltation of its stream habitat from construction and mining activities upstream, habitat loss resulting from bank stabilization and landowner access to waterfront, and water quality degradation from excessive nutrient loading of streams.

Because harperella generally occurs in areas with a high potential for human use, these threats have already impacted *P. nodosum* at various locations throughout its range. In Alabama, one of the three known historic sites for the species is under a reservoir and another has been eliminated by excessive siltation and water quality degradation (R. Kral, pers. comm; pers. obs.). Numerous coastal

plain ponds in South Carolina and Georgia, including the type locality, have been drained or otherwise severely disturbed. In West Virginia, ten thousand plants were destroyed in 1984 by construction at a housing subdivision. Throughout its range, over 50 percent of the known harperella populations have been destroyed.

State heritage programs and interested individuals have conducted intensive searches for *P. nodosum*. In West Virginia, over 260 miles of stream habitat, comprising nearly all the suitable habitats in the State, have been checked (R. Bartgis, West Virginia Natural Heritage Program, pers. comm., 1987); in Maryland also, surveys have been made of nearly all known suitable habitats for the species (D. Boone, Maryland Heritage Project pers. comm., 1987), and in South Carolina, a total of 360 coastal plain ponds have been examined in an effort to locate this plant (D. Rayner, South Carolina Heritage Trust, pers. comm., 1987). In Georgia extensive searches have been made of both granite outcrops and coastal plain ponds (T. Patrick, Georgia Natural Heritage Inventory; R. Carter, Valdosta State College, pers. comms., 1987). Georgia and Alabama sections of the Little River have also been checked (D. Whetstone, Jacksonville State University pers. comm., 1987). Despite these searches, *Ptilimnium nodosum* is presently known from only ten populations rangewide. These include six stream populations, in Alabama (De Kalb Co.), Maryland (Allegany Co.), North Carolina (one each in Granville and Chatham Cos.) and West Virginia (two Morgan Co.) and four pond populations, in Georgia (one known extant, in Greene Co.) and South Carolina (three viable populations in Aiken and Saluda Cos. The species may be present in small numbers at two additional sites, but its presence has not been confirmed recently and these are not considered to have long-term viability). Stream populations typically consist of tens of thousands of individuals patchily distributed along short stream sections. Location of these patches and number of individuals may change from year to year. Pond populations are more spatially predictable and typically number in hundreds. However, numbers of individuals in these populations too may fluctuate considerably from year to year.

Federal Government actions on this species began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51) was presented to Congress on January 9, 1975.

The Service published a notice in the July 1, 1975 **Federal Register** (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523), to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Ptilimnium nodosum* (and *P. fluviatile*) were included in the July 1, 1975, and June 16, 1976 **Federal Register** documents. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979 **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

On December 15, 1980, the Service published in the **Federal Register** a revised Notice of Review for Native Plants (45 FR 82480). *P. nodosum* and *P. fluviatile* were included in that notice as Category 2 species. Category 2 includes those taxa for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerablity and threats is not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review for Native Plants (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Ptilimnium nodosum* and *P. fluviatile* were included in both of these revisions as Category 2 species. As stated above, the Service now considers these to be a single species, *Ptilimnium nodosum*.

In 1985 the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *Ptilimnium nodosum* (including *P. fluviatile*) and several other Federal candidate species. Their report (Rawinski and Cassin 1986) and other information indicate that *P. nodosum* and *P. fluviatile* are appropriately considered a single taxon, that the number of extant sites for *P. nodosum* has declined significantly, and that there is a high degree of threat to remaining populations.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ptilimnium nodosum*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986; and October 11, 1987, the Service found tht the petitioned listing of *Ptilimnium nodosum* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final 1-year finding that is required on the petition.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1513 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ptilimnium nodosum* (Rose) Mathias (harperella) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The effects of human activities upon the habitat types in which *Ptilimnium nodosum* occurs have resulted in the permanent elimination of the plant and its habitat in many locations throughout its range. In Alabama, siltation, eutrophication and an impoundment have eliminated the plant from two of its three known historic localities. In Georgia and South Carolina, at least four *Ptilimnium nodosum* populations were obliterated when the ponds they inhabited were drained and converted to agriculture or otherwise severely disturbed. Of the five populations known to remain in South Carolina, two have been so severely disturbed that they are no longer considered viable (D. Rayner, pers. comm.). In West Virginia, an estimated ten thousand harperella

plants were recently destroyed during construction of a vacation home subdivision (Rawinski and Cassin 1986). Approximately 90 percent of the plants remaining at this site are now restricted to a 300-foot section of stream, where they are vulnerable to trampling and/or streamside alterations.

Other cases of habitat disruption may be less obvious yet no less detrimental to the plants. Harperella populations occurring at Harper's Ferry, West Virginia and at Hancock, Maryland in the early 1900's have been eliminated, possibly in association with the operation of the Chesapeake & Ohio Canal. Water quality degradation may also be threatening certain stream populations of harperella. The stretch of the Little River in which it occurs in Alabama may be receiving both excessive nutrient loading from insufficient sewage treatment and acid runoff from unreclaimed surface mines. This population is also threatened by the existence upstream of two unstable impoundments that could break and eliminate or degrade remaining harperella habitat in Alabama (D. Whetstone, pers. comm). Maryland's one known harperella population was threatened by siltation and runoff associated with the construction of a highway nearby. Although corrective measures have been taken, it is not certain that the threat to this site has been totally eliminated.

The estimated loss of 50 percent of known populations of *Ptilimnium nodosum* may actually be conservative; the species was known historically from a few traditional "good" collecting spots, but since it occupies habitat types that have been so extensively altered by human activities, it is likely that other populations were destroyed without being discovered.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Harperella has not been a target for collection, since it is not a showy plant and would not survive under normal garden conditions. Although the plant has been collected for scientific study, this does not constitute a threat for the species.

C. Disease or Predation

In its pond habitat, *P. nodosum* may occasionally be subject to grazing or trampling, where it occurs along the margins of ponds that have been altered for use by livestock. However, the disruption of its habitat, rather than any occasional grazing, poses the more severe threat. Disease is not known to be a problem for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

Ptilimnium nodosum is not known to occur on Federal land and presently receives no protection under any Federal law. Some populations do occur on State-owned land, in streams over which States have jurisdiction, or on preserves owned by The Nature Conservancy. In North Carolina and Maryland, the plant is protected from trade and unauthorized take. However, except in Maryland, where it receives limited protection, it is not protected from habitat loss, the primary threat to its survival. State Natural Heritage Programs, particularly in West Virginia and South Carolina, have been actively pursuing both easements and voluntary protection agreements with landowners. The agreements, while potentially very useful in protecting the plants, have no legal authority.

E. Other Natural or Manmade Factors Affecting its Continued Existence

In West Virginia, the exotic grass *Arthraxon hispidus* is seen as a potential competitor to *P. nodosum*. Over the past decade, this aggressive Asian introduction has become widespread in many parts of the State. As an annual, it can compete directly with parts of the State. As an annual, it can complete directly with harperella for occupation of ephemeral habitats; without control, *A. hispidus* could overrun and locally extirpate harperella.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ptilimnium nodosum* as endangered. At least eight populations are known to have been destroyed, and over half of the remaining known populations, together constituting over 95 percent of the known individuals, are faced with continuing habitat degradation. Although stream populations may be large in terms of number of individuals, destruction or degradation of their habitat would be equally effective at extirpating them regardless of their number.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Ptilimnium nodosum*. In its pond habitats, if its location were specifically delineated, as through the publication of critical habitat maps, it could be easily extirpated by vandals or curiosity seekers. Because it does not occur on Federal land, such taking would not be prohibited by the Endangered Species Act. In stream situations also, these plants would be vulnerable to vandalism if the stream sections in which they occur were specifically located. The State agencies and landowners involved in managing the habitat of this species have been informed of the plant's general locations and of the importance of protection. Therefore, the determination of critical habitat would not be prudent, and no additional benefit would result from it.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibition against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destory or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency

must enter into formal consultation with the Service.

At present, the only ongoing project with Federal involvement known to have potential impacts to *P. nodosum* is the maintenance of Maryland Route 48 in Western Maryland. The construction phase of this project has been largely completed; although erosion control measures have been taken, continued monitoring will be necessary to evaluate their effectiveness. Other federally funded or permitted actions which could affect this plant include, but are not limited to, SCS watershed management activities, FERC-permitted hydroelectric projects, construction projects involving Federal Highway Administration or Farmers Home Administration funds, or those within the jurisdiction of the Corps of Engineers.

The Act and its implementing regulations found at CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. In the case of *Ptilimnium nodosum*, it is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20036 (202/343–4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of *Ptilimnium nodosum* and the reasons why any habitat should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of the species; and

(4) Current or planned activities in the subject area and their possible impacts on *P nodosum*.

Final promulgation of the regulation on *Ptilimnium nodosum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services Field Office (see **"ADDRESSES"** section).

National Environmental Policy Act

The fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Rose, J.N. 1905. Two new umbelliferous plants from the coastal plain of Georgia. Proc. Nat. Acad. Sci. 29:441–3.

Rose, J.N. 1911. Two new species of *Harperella*. Contr. U.S. Nat. Herb. 13:289–90.

Author

The primary author of this proposed rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269-5448).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the Family Apiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Apiaceae-Carrot Family:						
Ptilimnium nodosum (*P. fluviatile*)	Harperella	U.S.A. (AL, GA, MD, NC, SC, WV)	E		NA	NA
*	*	*	*	*	*	

Dated: January 13, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-3947 Filed 2-24-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Helonias bullata (Swamp Pink) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Helonias bullata* to be a threatened species and thereby provide the species needed protection under the authority contained in the Endangered Species Act of 1973, as amended. Approximately 60 populations are known to occur throughout the species range from New Jersey to Georgia. Thirty-five of the known populations occur in the freshwater wetlands of New Jersey's coastal plain. Eight populations are known in Virginia, North Carolina has seven, and Delaware has six populations. Georgia, Maryland and South Carolina each have one known population, and the plant is believed to be extirpated from New York. The species is threatened by the filling and draining of its wetland habitats and by private collecting. Critical habitat is not being determined. Comments are solicited.

DATES: Comments from all interested parties must be received by April 25, 1988. Public hearing requests must be received by April 11, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Hecht at the above address (617-965-5100 or FTS 829-9316).

SUPPLEMENTARY INFORMATION:

Background

The swamp pink (*Helonias bullata*) represents a monotypic genus in the lily family (Liliaceae), which historically occurred along small streams and in swamps, bogs, and other wetlands from New York to northern Georgia. Although the first collection of the plant is uncertain, it probably occurred in the Philadelphia area in the mid-1700's by Swedish naturalist Peter Kalm. Based on Kalm's collections, the plant was described by Linnaeus in the first edition of *Species Plantarum* (Brown 1910).

This perennial species is strikingly attractive and very distinctive. It has many smooth, lance-shaped, evergreen leaves, which grow in a basal rosette from a tuberous rhizome. The stout, hollow stem is 1-2 feet (3-6 decimeters (dm)) tall and is topped by a short, dense raceme of pink or purplish flowers that appear in April or early May. The species inhabits a variety of freshwater wetlands including spring seepages, swamps, bogs, meadows, and margins of meandering small streams.

The most significant threat to *Helonias bullata* is the direct loss or alteration of its wetland habitats. Many eastern States have lost a significant percentage of their wetlands since the mid-1900's (Tiner 1986). Ditching and draining of lowlands for agricultural purposes and logging of hardwood swamps is continuing, but the greatest ongoing threat is the direct filling or alteration of inland wetlands due to expanding urbanization. Loss of swamp pink habitat can be attributed to channelization for flood control, ditching and draining for increased agriculture, and filling for housing projects, industrial developments, and highways. The quality of wetlands has also been degraded by sedimentation, water pollution and waste disposal. Several New Jersey populations of *Helonias bullata* have been completely destroyed or severely depleted by severe erosion and siltation from housing project construction activities.

Approximately 100 populations were known to exist historically in the State of New Jersey. Only 35-40 populations exist there today, and most of the historical sites are presumed lost to the filling, draining, and development of wetland habitats. A few populations have been found as a result of recent intensive field surveys but these new populations are small and usually in the vicinity of another existing colony. Some protection from development is provided to those populations that occur within the Pine Barrens National Reserve. These colonies are small, however, and virtually all of the State's largest populations are on private land outside of the Reserve and vulnerable to expanding urbanization (Snyder 1981).

Seven populations are known to occur in North Carolina, the largest of which is on Forest Service property. The remaining colonies are on private or corporate land. In North Carolina the plants are found exclusively in mountain bogs. This type of habitat is very rare in the State and local experts have thoroughly searched most areas where the swamp pink could potentially occur (Sutter 1984). *Helonias bullata* is listed as a threatened species under North Carolina's State Plant Law (N.C. General Statute 19-B, 202.12-202.19) which provides protection from intrastate trade and provisions for monitoring and proper management.

Destruction of swamp pink habitat has been particularly severe in Delaware due to agricultural drainage and urbanization. Five colonies are known to have been lost to development and only six extant populations remain in the State. Some potential habitat remains to be checked but the possibilities of finding any significant populations are remote. The Delaware Department of Natural Resources and Environmental Control is working toward the protection of the most significant colonies.

Eight populations are known to occur in Virginia, five of which, including one of the State's largest, are on Federal land. One population occurs on Park Service land and four on U.S. Forest Service property. Three Forest Service populations are offered some protection because they occur within Special Interest Areas or Wilderness Areas and the Forest Service is diligently working to protect the plants. The remaining populations are on private property.

Georgia, South Carolina and Maryland have only one known population each. The swamp pink occurs in high mountain bogs in Georgia and South Carolina. This habitat type is very limited in both States and local experts believe there is little chance of discovering additional populations. The Georgia plants occur on private land and the South Carolina plants occur on State Heritage Trust Land which was recently purchased to protect the site. The single Maryland population occurs on private land and is threatened by cutting and thinning of trees and other woody vegetation. Another historical population in the State was destroyed by ditching and draining of its wetland habitat for increased agriculture.

The swamp pink reaches its northern limit of range in New York. The New York plants were reported to occur on Staten Island and were last seen in the late 1800's. Surveys have been conducted in other potential habitats and the plant is now believed to be extirpated from the State. Previous records of the plants' occurrence in the State of Pennsylvania are believed to be in error.

Helonias bullata was first recognized by the Service in the comprehensive **Federal Register** notice of December 15, 1980 (45 FR 82480). The swamp pink was recognized as a "Category 2" candidate, the category in which it remained in the 1985 updated notice (50 FR 39526). Category 2 candidates are taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on those species, including *Helonias bullata*, was October 13, 1983. In October of 1983, 1984, 1985, 1986, and 1987, the petition finding was made that listing *Helonias bullata* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(iii) of the Act. Such findings require a yearly recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. This proposal constitutes the final one-year finding on the petition for this species.

In the fall of 1986 the Service completed a project with the Eastern Regional Office of The Nature Conservancy that assessed the range-wide status of 32 plant candidates including *Helonias bullata*. Extensive field searches were conducted in each State throughout the species' range under direction of the State Natural Heritage Programs. As a result of these investigations, the Conservancy recommended that *Helonias bullata* warranted Federal protection under the Endangered Species Act as a threatened species. This proposed rule constitutes the Service's concurrence with that recommendation.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helonias bullata* Linnaeus are as follows:

A. The Present or Threatened Destruction, Modification, or curtailment of its Habitat or Range

The most significant threat to *Helonias bullata* is the direct loss or alteration of its wetland habitats. The plant has been extirpated from many sites in the mid-Atlantic States due to expanding residential, commercial and industrial developments. Increased development has not only directly destroyed important wetland habitats but pollution and sedimentation, associated with urban and agricultural runoff have adversely impacted remaining habitats and the sites are no longer suitable for the species.

Ditching and draining of lowland areas to improve or create additional agricultural land have altered the groundwater table of swamp pink habitats. The alteration of the water table modifies vegetative succession permitting other more aggressive or non-native plants to become established. Additionally, because the swamp pink seems to prefer "seepage or spring swamps" for successful growth and reproduction, changes in natural succession of the woody vegetation due to a modified groundwater table have adversely impacted swamp pink populations.

The single Maryland population occurs in the approach path to a major airport. Due to safety regulations and instrumentation requirements, the vegetation in the approach corridor needs to be periodically cut, removed, trimmed, etc. Fish and Wildlife Service and State natural resource agency representatives have met with airport officials to discuss management alternatives that would conserve the site yet not compromise safety considerations. A management agreement for the site is currently being formulated with the State Aviation Administration. The agreement would protect the area where the plants occur, however, other potential private developments adjacent to the site are cause for concern.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Helonias bullata is referred to as one of the most beautiful plants in the eastern United States in several wildflower books and field guides. Its striking beauty has caused the plant to be sought by garden hobbyists and curiosity seekers. Many plants have also been taken for scientific purposes in documenting the species' range and distribution. Plants have been frequently taken from the single Georgia population by botanists and private collectors without the knowledge and consent of the landowner. The plant is also known as a highly desirable species for home wildflower gardens. A popular wildflower garden guide, *How to Grow Wildflowers, Wild Shrubs and Trees in Your Own Garden*, identifies the desirability of the swamp pink and recommends the plant for private gardens. Commercial collecting and selling of wild plants, however, does not appear to be significant at this time. A few commercial nurseries or gardens do sell plants cultivated from seed.

C. Disease or Predation

Disease is not known to be a threat to existing populations. Deer have extensively browsed some swamp pink colonies, but what specific role deer may play in the life history and ecology of the plant has not as yet been determined.

D. The Inadequacy of Existing Regulatory Mechanisms

North Carolina and Georgia are the only States that have placed *Helonias bullata* on an official State list. The North Carolina legislation to protect rare plants provides protection from intrastate trade, and contains provisions for monitoring and proper management. The Georgia Wild Flower Preservation Act of 1973 prohibits digging, removal, or sale of State listed plants from public lands without the approval of the Georgia Department of Natural Resources. The single Georgia population, however, is on private land. Section 404 of the Federal Water Pollution Control Act could potentially provide some protection to the species' habitats; however, many of the sites where the plants occur may not meet "wetlands" criteria under Section 404.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Alteration or modification of the groudwater table by activities adjacent to *Helonias bullata* sites could indirectly impact the species' habitats and requirements for growth. Several swamp pink populations, particularly in the southern portion of the species' range, are associated with more northern plant communities. Groundwater-influenced soils help maintain the required perennial cool temperature regimes. Ditching and draining of adjacent lands for agricultural purposes, suburban development, industrial parks, etc., or the withdrawal of groundwater for public water supply could alter the groundwater regime in the plants'

habitat and adversely impact the species.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Helonias bullata* as threatened. Due to the small number of populations and the threats to its wetland habitats the plant is in need of protection. In addition, the protection of the specific areas where the plants occur may not provide sufficient protection if development projects or other actions in the watershed significantly affect the local groundwater regime. An understanding of the species and its habitat requirements are important considerations in the protection and recovery strategy for the species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent, because no benefit to the taxon can be identified that would outweigh the potential threat of collection, which might be caused by the publication of a detailed critical habitat description and map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies, private conservation organizations, and individuals. The Nature Conservancy and State natural resource agencies are actively working to protect the sites of several populations. The single South Carolina population was recently purchased to protect the area as State Heritage Trust Land under auspices of the South Carolina Wildlife and Marine Resources Department.

Four of the known swamp pink populations occur in National Forests. This proposed rule has been discussed with Forest Service personnel and they are supportive and are taking action to conserve and protect the species. The swamp pink colonies on Forest Service land are within officially designated Special Interest Areas or Wilderness Areas. Conservation and protection of the unique habitats and natural resources in these areas has high priority. Other conservation measures, including required protection efforts by Federal agencies and prohibition against taking are discussed, in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act, are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. There are no known Federal projects at this time that may affect *Helonias bullata*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.71 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Helonias bullata* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 would apply. With certain exceptions, these prohibitions make it illegal for any person subject to the jurisdiction of the United States to import or export, any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possess. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.17 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Commercial trade in wild *Helonias bullata* is not known to exist at this time, although some plants grown in cultivation from seed are known to be sold by a few private nurseries. The Service, therefore, anticipates a few requests for permits. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Helonias bullata*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities that may impact existing populations.

Final promulgation of a regulation on *Helonias bullata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must file within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination

was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Brown, S. 1910. *Helonias bullata* L. in New Jersey. Bartonia 3:1–6.

Rawinski, T., and J.C. Cassin. 1986. Status report on *Helonias bullata. Unpublished report prepared for U.S. Fish and Wildlife Service.*

Snyder, D.B., and V.E. Vivian. 1981. Rare and endangered vascular plant species in New Jersey. U.S. Fish and Wildlife Service, Newton Corner, Massachusetts.

Sutter, R.D. 1984 The Status of *Helonias bullata* L. (Liliaceae) in the southern Appalachians. Castanea 49:9–16.

Tiner, R.W., and J.T. Finn. 1986. Status and recent trends of wetlands in the five mid-Atlantic States. U.S. Fish and Wildlife Service, Newton Corner, Massachusetts.

Author

The primary author of this rule is Richard W. Dyer (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Lilliaceae to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	* *	* *		*	*	
Liliaceae—Lily family:						
Helonias bullata	Swamp pink	U.S.A. (DE, GA, MD, NC, NJ, NY, SC, VA).	T		NA	NA
*	* *	* *		*	*	

Dated: January 13, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–3948 Filed 2–24–88; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

Thursday
February 25, 1988

Part IV

Committee for the Implementation of Textile Agreements

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Peru; Notice

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Peru

February 22, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 26, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letters published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits for certain cotton textile products for the periods which began on May 1, 1987 and extended through December 31, 1987 and which began on January 1, 1988 and extends through April 30, 1988.

Background

A CITA directive dated April 13, 1987 (52 FR 12449) established limits for certain specified categories of cotton and wool textile products, produced or manufactured in Peru and exported during the agreement year which began on May 1, 1987 and extends through April 30, 1988. Subsequent directives dated December 28, 1987 were published in the **Federal Register** (52 FR 49467 and 52 FR 49471) which amended these limits for two new restrain periods which began on May 1, 1987 and extended through December 31, 1987 and which began on January 1, 1988 and extends through April 30, 1988. Pursuant to a request from the Government of Peru and under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement on January 3, 1985, as amended, between the Governments of the United States and Peru, the current restraint limits and sublimits for Categories 219, 220, 226/313, 315, 317/326, 338/339 and 338–S/339–S, are being adjusted, variously, by application of swing and carryover. The previous restraint limits and sublimits for Categories 313, 315, 317, 317–S, 319, 320, 320pt., 338/339 and 338–S/339–S are also being adjusted, variously, by application of swing and carryover.

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 Annotates (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

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.

February 22, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the four-month period which began on January 1, 1988 and extends through April 30, 1988..

Effective on February 26, 1988, the directive of December 28, 1987 is amended to include adjustments to the following previously established restraint limits and sublimits, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended: [1]

Category	Adjusted 4-mo limit [1]
219	8,671,394 square yards.
220	4,434,849 square yards.
226/313	8,624,764 square yards.
315	1,632,084 square yards.
317/326	7,598,342 square yards of which not more than 2,279,503 square yards shall be in Category 326.
338/339	177,681 dozen of which not more than 120,425 dozen shall be in Categories 338–S/339–S (all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915).

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987

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.

February 22, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru, I request that, effective on February 26, 1988, you adjust the limits and sublimits established in the directive of April 13, 1987, as amended on December 28, 1987, for cotton

[1] The agreement provides, in part, that: (1) specific limits may be exceeded by designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be increased for carryover and carryforward not to exceed 11 percent; and (3) administrative arrangement or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

textile products in the following categories, produced or manufactured in Peru and exported during the period which began on May 1, 1987 and extended through December 31, 1987:

Category	Adjusted limit [1]
313	14,824,972 square yards.
315	3,263,188 square yards.
317	14,454,062 square yards of which more than 4,336,218 square yards shall be in Category 317-S.[2]
319	17,271,379 square yards.
320	12,981,629 square yards of which more than 3,625,765 square yards shall be in Category 320-P.[3]
338/339	355,256 dozen of which not more than 240,777 dozen shall be in Categories 338-S/339-S.[4]

[1] The limits have not been adjusted to account for any imports exported after April 30, 1987.

[2] In Category 317-S, only TSUSA items 320.— through 331.—, with statistical suffixes 50, 87 and 93.

[3] In Category 320-P, only TSUSA items 320.—, 321.—, 322.—, 326.—, 327.— and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[4] In Categories 338-S/339-S, all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2606, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-4022 Filed 2-24-88; 8:45 am]

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