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federal register

Tuesday
November 26, 1985

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

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Banks, Banking
Farm Credit Administration
Federal Reserve System

Education
Veterans Administration

Endangered and Threatened Species
Fish and Wildlife Service

Government Procurement
Defense Department
General Services Administration
National Aeronautics and Space Administration

Investment Advisers
Securities and Exchange Commission

Legal Services
Legal Services Corporation

Natural Gas
Federal Energy Regulatory Commission

Pesticides and Pests
Environmental Protection Agency

Postal Service
Postal Service

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Selected Subjects

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Quarantine
Animal and Plant Health Inspection Service

Radio and Television Broadcasting
Federal Communications Commission

Railroad Retirement
Railroad Retirement Board

Savings and Loan Associations
Federal Home Loan Bank Board

Securities
Securities and Exchange Commission

Supplemental Security Income
Social Security Administration

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

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

WHO: The Office of the Federal Register.

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

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

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center.
215-597-1709

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Presidential Documents

Title 3—

The President

Proclamation 5413 of November 23, 1985

National Day of Fasting To Raise Funds To Combat Hunger, 1985

By the President of the United States of America

A Proclamation

At this time of national Thanksgiving, when we thank God for our many blessings, we are especially mindful of those in distress. And we thank God for inviting us to respond with open hearts to the cry of the afflicted and the needy. For in being generous to others we become more like Him Who has been so generous to us. Most recently, we heard the cry for help that came from the rubble of Mexico City and from the people of Colombia whose villages were engulfed by mud slides. We heard and we responded.

Similarly, we hear and we continue to respond to the cry that comes to our ears from the famine-stricken regions of Africa. That famine has already caused the death of hundreds of thousands of people and endangers the lives of millions. The solution to such famine involves not only rushing emergency food and medical supplies to the areas stricken, but also improving agricultural policies and enlisting greater cooperation by certain governments with international relief agencies.

Americans from all walks of life and every part of our country have responded quickly and generously to every famine that has occurred since World War II. And we have already raised more than $120 million for emergency relief for victims of the current famine in Africa. The generosity and compassion of our people deserve to be recognized and commended.

It has been estimated that in Africa 24 people die of starvation each minute; clearly much more must be done.

Various private organizations are organizing a day of fasting as a means by which Americans can show their concern, express solidarity with the plight of fellow human beings suffering from hunger, and draw attention to efforts to raise funds to help the victims of famine.

The Congress, by House Joint Resolution 386, has designated November 24, 1985, as "National Day of Fasting to Raise Funds to Combat Hunger" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 24, 1985, as National Day of Fasting to Raise Funds to Combat Hunger. I call upon the people of the United States to observe such day with appropriate ceremonies and other activities and to consider donating to relief organizations fighting hunger.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of November, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-28341
Filed 11-25-85; 10:27 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-387]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on August 26, 1985, which amended the list of regulated areas under the imported fire ant quarantine and regulations by designating a previously nonregulated area in South Carolina as a generally infested area and by expanding previously designated generally infested areas in South Carolina and Texas. The quarantine and regulations, among other things, impose restrictions on the interstate movement of regulated articles from generally infested areas. This rule is necessary in order to prevent the artificial spread of the imported fire ant through the interstate movement of regulated articles.

EFFECTIVE DATE: November 26, 1985.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on August 26, 1985, (50 FR 34447-34449) amended the list of regulated areas under the imported fire ant quarantine and regulations (7 CFR 301.81 *et seq.*) Specifically, the interim rule amended § 301.81-2a of the quarantine and regulations by designating a previously nonregulated area in South Carolina as a generally infested area and by expanding previously designated generally infested areas in South Carolina and Texas. The quarantine and regulations, among other things, impose restrictions on the interstate movement of regulated articles from generally infested areas. The interim rule became effective on the date of publication.

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factural situations which were set forth in the document of August 26, 1985, still provide a basis for the amendments made by the interim rule. Accordingly, it has been determined that the amendments should remain effective as published in the **Federal Register** on August 26, 1985.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an estimated annual effect on the economy of approximately $5,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action affects the interstate movement of regulated articles from specified areas in the States of South Carolina and Texas. There are thousands of small entities that move such articles interstate from South Carolina and Texas and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the Department, it has been determined that approximately 72 small entities move such articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $5,000.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (agriculture), Quarantines, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 50 FR 34447-34449 on August 26, 1985, is adopted as a final rule.

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

Done at Washington, D.C., this 21st day of November, 1985.

H.L. Ford,
Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-28187 Filed 11-25-85; 8:45 am]
BILLING CODE 3410-34-M

7 CFR Part 301

[Docket No. 85-388]

Mediterranean Fruit Fly; Removal of Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule

published in the **Federal Register** on August 27, 1985, which amended the Domestic Quarantine Notices by removing the "Subpart—Mediterranean Fruit Fly" quarantine and regulations. The quarantine and regulations had quarantined Florida and had imposed restrictions on the interstate movement of regulated articles from a regulated area in Dade County, Florida. The quarantine and regulations were established for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. It has been determined that all infestations of Mediterranean fruit fly in Florida have been eradicated and the quarantine and regulations are no longer necessary. The effect of the removal of the quarantine and regulations was to delete restrictions on the interstate movement of previously regulated articles from the previously regulated area in Dade County.

EFFECTIVE DATE: November 26, 1985.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on August 27, 1985 (50 FR 34673-34674) amended the Domestic Quarantine Notices (7 CFR Part 301) by removing the "Subpart—Mediterranean Fruit Fly" quarantine and regulations (7 CFR 301.78 *et seq.*).

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factual situations which were set forth in the document of August 27, 1985, still provide a basis for the amendment made by the interim rule. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on August 27, 1985.

Executive Order 12291 and Regulatory Flexibility Act

This action is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this action will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. The interim rule deleted restrictions that had been imposed on the interstate movement of regulated articles from a portion of Dade County, Florida, approximately 90 square miles in size. It appears that there is very little commercial activity that occurs in this area. Specifically, it is comprised of private residences; small entities, including approximately 75 nurseries and 70 retail stores; 125 street vendors and open fruit stands; and fewer than 10 premises with orchards and vegetable plots (ranging in size from ½ acre to 15 acres). Most regulated articles sold by small entities in this area are moved solely in intrastate commerce. Further, the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, of deleting restrictions on the interstate movement of articles sold by these entities appears to be minimal.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 50 FR 34673-34674 on August 27, 1985, is adopted as a final rule.

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

Done at Washington, DC, this 21st day of November 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-28188 Filed 11-25-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Reg. Q; Docket No. R-0559]

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by Hurricane Gloria in the New York counties of Nassau and Suffolk.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Senior Attorney (202/452-3711) or Patrick J. McDivitt, Attorney (202/452-3818), Legal Division, or Joy W. O'Connell, Telecommunication Device for the Deaf (202/452-3244), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On October 18, 1985, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the counties of Nassau and Suffolk, New York major disaster areas. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty

upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of Hurricane Gloria beginning on or about September 27, 1985. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to October 18, and will remain in effect until 12 midnight, April 22, 1986.

List of Subjects in 12 CFR Part 217

Advertising, Banks, Banking, Federal Reserve System, Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the counties directly affected by Hurricane Gloria, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, November 20, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-28108 Filed 11-25-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 508

Presidentially Declared Emergencies

Dated: November 14, 1985.

AGENCY: Federal Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending 12 CFR 508.10-1 to provide for the waiver or relaxation of the operating requirements applicable to Federal savings and loan associations ("Federal associations"), institutions insured by the Federal Savings and Loan Insurance Corporation ("insured institutions"), and member institutions of the Federal Home Loan Bank System ("Bank System members") in the event of a Presidentially declared "emergency" as well as in the event of a Presidentially declared "major disaster." Such waiver or relaxation is within the Board's discretion and is available only to institutions in the designated area.

EFFECTIVE DATE: November 26, 1985.

FOR FURTHER INFORMATION CONTACT: C. Dawn Causey, Attorney, Regulations and Legislation Division, Office of General Counsel, at (202) 377-6472, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Disaster Relief Act of 1974, 42 U.S.C. 5121 *et seq.*, empowered the President to declare an area either a "major disaster area" or an "emergency area," depending upon the severity and extent of the disaster and the damage suffered. Previous legislation had only provided the President with the power to declare a "major disaster area," which automatically triggered the full panoply of federal disaster assistance, whether or not necessary or appropriate. Because there are disaster situations in which only limited federal aid is required, the Disaster Relief Act of 1974 created a second category of disaster for such circumstances. This second, lesser disaster category of "emergency" allows the President to declare an "emergency area" and activate ony such assistance programs as are appropriate.

Pursuant to the earlier disaster assistance legislation, the Board promulgated 12 CFR 508.10-1 to provide for discretionary Board waiver or relaxation, to the extent not inconsistent with law, of any limitations pertaining to the operations of Federal associations, insured institutions, and Bank System members in any area declared by the President to be a major disaster area. In keeping with the intent of the Disaster Relief Act to provide an additional category of Presidentially declared disaster, the Board has decided to amend section 508.10-1 to include Presidentially declared emergencies as well as Presidentially declared major disasters as events which would permit the Board to waive or relax the operating requirements for institutions in areas so designated.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13 and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 are unnecessary because the amendment is minor in nature, and merely conforms regulatory language in accordance with a statutory change.

List of Subjects in 12 CFR Part 508

General, Savings and loan associations.

Accordingly, the Board hereby amends section 508.10-1 of Subchapter A of Chapter V, Title 12, Code of Federal Regulations, as set forth below.

PART 508—PROMULGATION OF REGULATIONS AND AMENDMENTS

1. The authority for 12 CFR 508.10-1 continues to read:

(Secs. 5, 402, 403, 48 Stat. 132, 1256, 1257, as amended (12 U.S.C. 1464, 1725, 1726)).

§ 508.10-1 [Amended]

2. Amend § 508.10-1 by inserting the phrase "or emergency" after the word "disaster" each place it appears in the heading and the text of the section and by removing the word "or" before the word "so" in the text of the section.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-28169 Filed 11-25-85; 8:45 am]

BILLING CODE 6720-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), amends its regulation concerning the acquisition and disposition of real and personal property by Farm Credit System (System) banks and of System bank board policies on electronic data processing and word processing programs. The proposed amendment will eliminate these FCA prior approval requirements in both cases.

EFFECTIVE DATE: Thirty days from this publication date, provided either or both Houses of Congress are in session. Notice of the effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Beltramo, Office of Examination and Supervision, (703) 883-4441

or

Dorothy J. Acosta, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4023.

SUPPLEMENTARY INFORMATION: In the August 5, 1985, **Federal Register** (50 FR 31607), FCA published the proposed amendment to its regulation concerning System acquisition and disposition of real and personal property and System bank board policies on electronic data processing and word processing

programs and invited public written comments for 60 days ending September 29, 1985. Comments were received from four Farm Credit districts: The Farm Credit Banks of Springfield, the Farm Credit Banks of Baltimore, the Farm Credit Banks of Omaha, and the Farm Credit Banks of Sacramento. The Baltimore and Omaha banks were in favor of the proposed amendment.

The Springfield banks stated that proposed 12 CFR 615.5150(c)(5) adds an unnecessary control by requiring the banks, when approving association requests, to assure the competitiveness of bids. They suggested the regulation be revised to permit after-the-fact reviews to ensure that bid competition has been considered and documented. The Federal Board does not believe an after-the-fact review would ensure competition or would be adequate to correct discoveries of non-competitiveness where a contract has been consummated and property purchased. Accordingly, the Federal Board declined to adopt the Springfield suggestion.

The Sacramento banks commented that the proposed regulation unnecessarily requires supervising banks to approve all association leases. The banks stated that they currently only approve association leases having terms in excess of 5 years and recommended the regulation be amended to require bank approval only of leases of 5 years or more. However, the proposed regulation amendment does not require approval of all association leases. The district boards are required to approve guidelines for all associations in the district and within those guidelines the banks must approve only the initial lease of any association building site or building. The Federal Board believes these requirements are minimal and not unduly burdensome and thus did not consider the change appropriate.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

PART 615—[AMENDED]

As stated in the preamble, it is proposed that Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations, be revised as follows:

1. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, and 621 (12 U.S.C. 2243, 2246, 2252).

2. Section 615.5150 is revised to read as follows:

§ 615.5150 Real and personal property.

(A) Real estate and personal property may be acquired, held, or disposed of by any Farm Credit institution for the necessary and normal operations of its business. The purchase, lease, or construction of office quarters shall be limited to facilities reasonably necessary to meet the foreseeable requirements of the institution. Property shall not be acquired if it involves, or appears to involve, a bank or association in the real estate or other unrelated business.

(b) District boards, prior to approving the purchase, lease, construction, or sale of Farm Credit System bank buildings and appurtenances or the purchase, lease, or sale of a proposed bank building site, shall evaluate and document:

(1) The need, including projected building size needs, for the purchase, lease, or sale;

(2) Alternative sites or alternative building considerations;

(3) The estimated costs for the completed project and impact on the bank's financial condition;

(4) The impact of the proposed action on the operational effectiveness of the bank; and

(5) The competitiveness of bids associated with constructions or real property disposals.

(c) It shall be the responsibility of the district board to approve guidelines for all associations in the district to follow regarding the purchase, lease, construction, or sale of office space and purchase, lease, or sale of a building site. Purchase, lease, construction, or sale of association buildings and appurtenances, or the purchase, lease, or sale of a proposed association building site shall have the approval of the appropriate supervising bank, which shall keep the bank board currently advised of such actions. In the case of joint association office buildings, these actions shall be approved jointly by the supervising banks. In approving association requests, the supervising bank shall assure that association office proposals meet district requirements and plans, and that the following matters have been evaluated and documented:

(1) The need, including projected building size needs, for the purchase, lease, or sale;

(2) the adequacy or inadequacy of the size of the building to be purchased, leased, or sold;

(3) the appropriateness of the proposed site for serving borrowers of the association's chartered territory;

(4) the estimated costs for the completed project and the impact of the proposal on the financial condition of the association; and

(5) the competitiveness of bids associated with constructions or real property disposals have been considered and documented.

Within the framework of bank board guidelines, the Federal land banks and Federal intermediate credit banks may prescribe office facility-related criteria for associations and give association boards authority to take office facilities actions without bank prior approval. However, such delegations shall not include the authority to approve the purchase of, initial lease of, new construction on, or sale of association building sites or buildings. New construction as used in this paragraph does not include repairs, remodeling, and normal maintenance in connection with existing association office quarters.

(d) Each district board shall adopt policies to provide bank managements with direction in the formulation of information processsing programs. These policies shall require the development of short- and long-range information processing plans for the district. In accordance with the district information processing plan, each bank and the associations it supervises may acquire equipment, software, and such personnel related to information processing only when consistent with the plan. Such association acquisitions shall be subject to approval by the supervising bank. The operation of information processing facilities must be consistent with the Farm Credit Administration's information processing standards.

(e) The term "information processing" as used in paragraph (d) of this section shall mean the entire electronic environment, including information processing personnel, equipment, software, and data. No distinction is made between terminal versus computer operation and word processing is not distinguished as a separate category.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-28114 Filed 11-25-85; 8:45 am]

BILLING CODE 6705-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-22601; File No. S7-787]

Amendments to Rule 15Bc7-1 to Make Composite Compliance Examination Information Available to the Municipal Securities Rulemaking Board

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: At the request of the Municipal Securities Rulemaking Board, the Commission is amending its rule governing the availability to the Board of copies of reports of compliance examinations of municipal securities brokers and dealers. The amendments permit examining authorities to submit certain composite information derived from compliance examinations in lieu of individual examination reports to the Commission to be made available to the Board.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: William W. Uchimoto, Esq., (202) 272-2409, Room 5193, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Section 15B(c)(7) of the Securities Exchange Act of 1934 ("Act") requires that copies of reports of compliance examinations of municipal securities brokers and municipal securities dealers made by the Commission, or furnished to it by the National Association of Securities Dealers, Inc. ("NASD") or by the appropriate bank regulatory agencies,[1] shall, on request, be made available to the Municipal Securities Rulemaking Board ("MSRB") subject to such limitations as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors. In response to a written request by the MSRB for copies of examination reports and in order to implement the requirements of Section 15B(c)(7), the Commission adopted Rule 15Bc7-1 on October 16, 1979.[2] The rule makes information from reports of examinations available to the MSRB, subject to limitations designed to protect the confidentiality of such information, and establishes procedures for furnishing the information to the MSRB. The information provided to the MSRB pursuant to the Rule was intended to be a source of current data that the MSRB could use to monitor the activities of municipal securities professionals in analyzing the need for rulemaking.

The MSRB informed the Commission that the information it receives pursuant to the rule, *i.e.*, descriptions of each examination, is not as useful to the MSRB as would be a report reflecting composite information derived from compliance examinations occurring over a specific period. Accordingly, the MSRB requested that the rule be amended to permit the NASD and the bank agencies to provide more generalized, composite statistical and analytical data on compliance examinations in lieu of individual examination reports or the present summary compliance reports. Accordingly, on May 28, 1985, the Commission issued a release proposing to amend Rule 15Bc7-1 to permit the periodic filing of composite information instead of the more frequent submission of information reflecting individual compliance examinations.[3]

II. Summary of Comments

In response to the Proposal Release, the Commission received comment letters from the NASD [4] and the MSRB.[5] The NASD expressed "its strong support for the proposed rule change" and stated that "such amendments will provide the Association a more efficient method of making information available to the MSRB regarding [the NASD's] compliance examinations on municipal securities brokers and dealers." Similarly, the MSRB expressed its support for adoption of the proposed amendments. The MSRB believed that "the amendments will be less burdensome for the enforcement agencies to comply with. At the same time, the information provided the Commission and the Board on the revised form will be much more useful in evaluating the effectiveness of Board rules than is the information currently received."

The MSRB suggested two revisions to the proposed amendments. First, the MSRB suggested that paragraph (b) of the rule clarify that the Commission, and not the examining authorities, is required to submit a copy of the reporting form to the MSRB. Second, the MSRB requested modification of subparagraph (4) of paragraph (b) to include the reporting of non-public information of actions taken by examining authorities in response to violations of MSRB rules by municipal securities dealers.[6]

III. Discussion

After considering the comments, the Commission has determined to approve the amendments. The Commission believes that the amendments will ease the reporting burden of the examining authorities while providing the MSRB with an opportunity to receive information in the form that can highlight areas where additional rulemaking may be needed. Accordingly, the Commission has determined to approve the amendments to Rule 15Bc7-1 in revised form, which incorporate the suggestions made by the MSRB.

The amendments allow the examining authorities to submit, in place of full examination reports, two copies of the cumulative report to the Commission, one for the Commission's use and the other to be furnished to the MSRB. Both copies may not identify the firms that are the subject of the reports; the Commission, however, may request such identities as well as the full examination reports for its own use.

IV. Effects on Competition

Section 23(a)(2) [7] of the Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission believes that the

[1] Examinations are performed by five entities. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, as appropriate regulatory agencies, examine municipal securities dealers which are banks or separately identifiable departments or divisions of banks (as defined in MSRB rule G-1) regulated by those agencies. The NASD conducts compliance examinations of its members. The Commission is the appropriate regulatory agency for, and routinely examines, municipal securities brokers and the remaining municipal securities dealers that are not members of the NASD.

[2] *See* Securities Exchange Act Release No. 16282 (October 16, 1979), 44 FR 61944. The rule was proposed for comment in Securities Exchange Act Release No. 15885 (May 30, 1979), 44 FR 32616.

[3] *See* Securities Exchange Act Release No. 22083 (May 28, 1985) ("Proposal Release"), 50 FR 23443. Due to an oversight, part of the text of the proposed amendments was missing from the release and did not appear in the **Federal Register**. Accordingly, on June 27, 1985, the Commission republished the full text of the amendments. *See* Securities Exchange Act Release No. 22083A (June 27, 1985), 50 FR 28108.

[4] *See* Letter from John E. Pinto, Jr., Senior Vice President, Compliance, NASD, to John Wheeler, Secretary, Commission (July 12, 1985).

[5] *See* Letter from Diane G. Klinke, Deputy General Counsel, MSRB, to John Wheeler, Secretary, Commission (July 12, 1985).

[6] The MSRB indicated that this information should disclose instances where the staff of an examining authority had referred violations to its Board or a District Business Conduct Committee (in the case of the NASD).

[7] 15 U.S.C. 78w(a)(2).

amendments will have no effect on competition. In this regard, the amendments provide all examining authorities with an alternative method of supplying information for which they currently are required to provide the Commission.

V. Regulatory Flexibility Act Consideration

Section 603(a) [8] of the Administrative Procedure Act,[9] as amended by the Regulatory Flexibility Act ("RFA"),[10] generally requires the Commission to undertake a regulatory flexibility analysis of the impact of a rule or amendment on "small entities," unless exempted under Section 605(b) on the basis that the rule or rule amendments would not have a significant impact on a substantial number of small entities. The amendments' primary effect will be to provide the MSRB and the examining authorities a more efficient method of making available to the MSRB information regarding compliance examinations of municipal securities brokers and dealers. Because the MSRB and the examining authorities are not small entities for purposes of the RFA, the Chairman of the Commission has certified that the amendments will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VI. Statutory Basis and Text of the Amendments

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

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

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

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. Section 240.15Bc7-1 issued under Secs. 15B, 17, and 23(a), 15 U.S.C. 78*o*-4, 78q, and 78w(a).

2. Section 240.15Bc7-1 is revised as follows:

§ 240.15Bc7-1 Availability of examination reports.

(a) Upon written request, copies of any report of an examination of a municipal securities dealer made by the Commission or furnished to it by an appropriate regulatory agency pursuant to section 17(c)(3) of the Act or by a registered securities association pursuant to section 15B(c)(7)(B) of the Act shall be made available to the Municipal Securities Rulemaking Board (the "Board") by the Commission subject to the following limitations:

(1) The Board shall establish by rule and shall maintain adequate procedures for ensuring the confidentiality of any information made available to it by the Commission pursuant to section 15B(c)(7)(B) of the Act;

(2) Information made available to the Board shall not identify any municipal securities broker, municipal securities dealer, or associated person that is the subject of a non-public examination report.

(b) If information to be made available to the Board is furnished to the Commission on a separate form prepared by an appropriate regulatory agency other than the Commission or by a registered securities association, that form, rather than a copy of any report of an examination, will be made available to the Board, provided that the conditions set forth in this paragraph are satisfied. Within sixty days of every six month period ending May 31 and November 30, each appropriate regulatory agency or registered securities association making available information on a separate form shall furnish to the Commission two copies of a form containing the information set forth in paragraphs (b)(1) through (b)(8) of this section. The Commission shall make one copy of the form promptly available to the Board. Copies of any forms furnished pursuant to this paragraph shall not identify any municipal securities broker, municipal securities dealer, or associated person that is the subject of an examination from which information was derived for the form; however, the Commission may obtain for its own use, upon request, the identity of any such examinee or the full examination reports. Furnished forms shall include the following information:

(1) The report period.

(2)(i) With respect to a registered securities association, the number of examinations that formed the basis of the report and, of these examinations, the number that were routine, special, and financial/operational. (ii) With respect to an appropriate regulatory agency that is a bank agency, the number of examinations that formed the basis of the report and, of these examinations, the number that were routine, special, and financial/operational. The number of examinations that formed the basis of the report of bank dealers and the number of examinations of separately identifiable departments or divisions of banks effecting municipal securities transactions.

(3) Indications of the violations of each Board rule found in examinations that formed the basis for the report.

(4) Copies of public notices issued during the report period of any formal actions and non-public information regarding any actions taken on violations of Board rules.

(5) Any comments concerning any questionable practices relating to municipal securities activities, whether or not covered by provisions of the Act and the rules and regulations thereunder, including the rules of the Board.

(6) Descriptions of any significant or recurring customer complaints relating to municipal securities activities received by the appropriate regulatory agency or registered securities association during the report period or by municipal securities dealers during the 12 month period preceding the examination.

(7) Description of any novel issues or interpretations arising under the Board's rules.

(8) Description of any changes to existing Board rules or additional rules that would improve the regulatory scheme for municipal securities professionals or assist in the enforcement of the Board's rules.

(c) Copies of any report of an examination of a municipal securities broker or municipal securities dealer made by the Commission or furnished to it pursuant to section 15B(c)(7)(B) or section 17(c)(3) of the Act, or separate forms made available to the Commission pursuant to paragraph (b) of this section, will be maintained in a non-public file.

Dated: November 7, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-28001 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

[8] 5 U.S.C. 603(a).

[9] 5 U.S.C. 551 *et seq.*

[10] Pub. L. No. 96-354, 94 Stat. 1164, (September 19, 1980).

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17 CFR Part 275

[Rel. No. IA 996; File No. S7-11-85]

Exemption To Allow Registered Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Rule.

SUMMARY: The Commission is adopting a rule under the Investment Advisers Act of 1940 to permit registered investment advisers to charge certain clients performance or incentive fees. Under the Advisers Act, registered investment advisers may not enter into performance fee contracts except under the limited circumstances set forth in the Act or under a Commission exemptive order or rule. The rule as adopted, which reflects certain changes made as a result of comments on the proposed rule, will provide registered investment advisers and their clients significantly more flexibility in negotiating their compensation arrangements.

EFFECTIVE DATE: November 26, 1985.

FOR FURTHER INFORMATION CONTACT: Forrest R. Foss, Special Counsel (202-272-2105), or John Banks-Brooks, Attorney Adviser (202-272-7313), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. After the effective date, questions should be directed to: Office of the Chief Counsel (202-272-7308), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is today adopting Rule 205-3 under the Investment Advisers Act of 1940 ("the Advisers Act"). The rule, which was proposed for public comment on March 15, 1985,[1] permits a registered investment adviser to be compensated on the basis of a share of the capital gains on or capital appreciation of client assets. Compensation of this type, generally referred to as a "performance" or "incentive" fee, is prohibited by Section 205 of the Advisers Act with certain limited exceptions. Under the general exemptive authority of Section 206A of the Act, however, the Commission has issued a number of orders permitting registered investment advisers to charge performance fees. The Commission has now determined to adopt a general exemptive rule which will permit investment advisers subject to registration under the Act to receive performance fees under certain limited circumstances.

Under the rule as adopted, a registered investment adviser may enter into an advisory contract calling for a performance fee if: (a) The client (i) has at least $500,000 under the management of the adviser; or (ii) the adviser reasonably believes the client has a net worth of at least $1,000,000; (b) the adviser's compensation is based on a formula which includes realized capital losses and, under certain circumstances, unrealized capital depreciation; (c) the compensation paid to the adviser under the rule is based on performance over a period of not less than one year; (d) the adviser discloses certain information to the client; and (e) the adviser reasonably believes that the contract represents an arm's-length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the performance fee contract and its risks.

Where the client entering into a performance fee contract is a registered investment company, business development company or a certain type of pooled investment vehicle, defined in the rule as a "private investment company," the eligibility requirements of the rule are modified. These entities may enter into contracts under the rule only if each of their equity owners individually satisfies the rule's eligibility conditions. Finally, the rule provides a limited degree of transitional relief for certain performance fee contracts in existence prior to November 14, 1985.

I. Background

A. General

Section 205(1) of the Advisers Act prohibits an investment adviser subject to registration from entering into, extending, renewing or performing any investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of a client. The prohibition against performance-based compensation does not apply to: (i) Advisory contracts which provide for compensation based on the total value of the client's account averaged over a definite period, or as of definite dates, or taken as of a definite date; (ii) contracts with investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") provided that an appropriate folcrum fee is used;[2] (iii) contracts relating to the investment of assets in excess of $1,000,000 with persons other than trusts, collective trust funds, or separate accounts referred to in section 3(c)(11) of the Investment Company Act [15 U.S.C. 80a-3(c)(11)] provided that an appropriate folcum fee is used; and (iv) advisory contracts involving business development companies provided the conditions set forth in section 205(C) of the Advisers Act [15 U.S.C. 80b-5(C)] are met.

Congress enacted the prohibition of Section 205(1) against performance fees in 1940 to protect clients of investment advisers from fee arrangements which in Congress' view could encourage advisers to engage in speculative trading practices while managing client funds in order to realize or increase an advisory fee.[3] In 1970, Congress enacted Section 206A of the Advisers Act which authorizes the Commission to exempt any person or transaction from any provision of the Act, provided the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Advisers Act. At the time it enacted section 206A, Congress specifically indicated that Commission action would be appropriate in certain cases "to exempt persons . . . from the bar on performance [compensation]."[4] Beginning in 1975, the Commission began granting exemptive orders from the section 205(1) prohibition.[5]

B. The 1983 Proposal

Prompted by criticism from the investment advisory industry that the general ban on performance fees was unnecessary for certain clients, the Commission undertook a review of the propriety of providing more general relief from the prohibition than was possible through the individual exemptive order process. This review resulted in a June, 1983 proposed rule.[6]

[1] Investment Advisers Act Release No. 961 (50 FR 11718).

[2] A fulcrum fee is one in which the adviser's fee is averaged over a specified period and increases and decreases proportionately with the investment performance of the account in relation to the investment record of an appropriate index of securities prices.

[3] H.R. Rep. No. 2639, 78th Cong. 3d Sess. 29 (1940). Performance fees were characterized as, "heads I win, tails you lose," arrangements in which the adviser had everything to gain if successful and little, if anything to lose, if not. S. Rep. No. 1775, 76th Cong., 3d Sess. 22 (1940). *See also*, Report of the Securities and Exchange Commission on Investment Counsel Investment Management, Investment Supervisory and Investment Advisory Services, H.R. Doc. No. 477, 76th Cong., 3d Sess. 30 (1939).

[4] S. Rep. No. 91-184, 91st Cong., 1st Sess. 46 (1969); H.R. Rep. No. 91-1382, 91st Cong., 2d Sess. 42 (1970).

[5] *See* Investment Advisers Act Release Nos. 459 and 461; May 7, 1975, and June 5, 1975, respectively.

[6] The Commission initially proposed an exemptive rule under Section 205 in 1979 (Investment Advisers Act No. 680, June 19, 1979). The rule, however, was limited to investment advisers to business development companies. Prior to final action by the Commission, Congress enacted section 205(C) which, as noted, permits investment advisers to business development companies to receive performance compensation limited to not more than 20% of net realized capital gains of the business development company. The proposed exemptive rule was withdrawn in Investment Advisers Act Release No. 750 (February 20, 1981).

Subject to certain conditions, the 1983 proposal would have provided general exemptive relief for registered advisers to enter into contracts with persons who, because of their wealth and financial knowledge and experience, were considered to be less dependent on the protections which the performance fee prohibition is intended to provide.[7]

The 1983 proposal generated a varied response from members of the public, and, in May, 1984, it was withdrawn.[8] After withdrawal of the proposal, however, the Commission continued to grant individual orders permitting registered investment advisers to charge certain clients performance fees. Since 1975, the Commission has granted a total of 22 orders, with 13 granted since the 1983 proposal.

C. The 1985 Proposal

The conditions of the 1985 proposal were based on the specific provisions of Section 205 of the Act, a review of the legislative history of that section, Congressional intent with regard to the limitations on performance fees and individual exemptive orders granting relief from the prohibition of Section 205(1).[9] In response to the 1985 proposed rule, the Commission received 49 comment letters. Forty-three commentators either supported the rule as proposed or with certain modifications. Six opposed adoption of a general performance fee exemption.[10]

After considering the comment letters and its reasons for proposing the rule, the Commission has decided to adopt the rule with certain changes. The Commission believes that permitting the use of performance fees in the limited circumstances allowed by the rule is in the public interest and consistent with the protection of investors and the purposes fairly intended by the Advisers Act. The Commission's decision to provide generic relief for performance fees under certain limited circumstances is based on its experience in granting individual exemptive orders, its review of the legislative history of section 205(l) and section 206(A), and the experience of other regulatory authorities in areas where performance fees are allowed. The Commission has concluded that it is consistent with the protection of investors and the purposes of the Act to permit clients who are financially experienced and able to bear the risks associated with performance fees to have the opportunity to negotiate compensation arrangements which they and their advisers consider appropriate. The Commission believes that the conditions of the rule provide alternative safeguards to the statutory prohibition. The rule should result in more competition among advisers and more flexibility for investors without sacrificing investor protections. As noted, however, the Commission is modifying the proposed rule in certain respects. These changes and the specific provisions of the final rule are discussed in detail below.

II. General Provisions of the Rule

A. Exemption

Paragraph (a) of the rule as adopted is identical to paragraph (a) of the proposed rule. It provides relief from the general prohibition of section 205(l) of the Advisers Act to permit a registered investment adviser to enter into and perform an advisory contract which provides for a performance fee provided all of the conditions of the rule are met.

B. Eligible Clients

Paragraph (b) sets forth alternative objective tests for measuring client eligibility to enter into a performance fee contract under the rule. Commentators expressed widespread support for the proposed tests as appropriate means of determining client capacity to understand and bear the risks associated with performance fee contracts. Several commentators, however, urged the Commission to revise the eligibility standards of the paragraph or clarify their applicability.

A number of commentators, referring to Regulation D under the Securities Act of 1933, urged the Commission to extend client eligibility to any natural person who had an individual income in excess of $200,000 in each of the two most recent years and who reasonably expects an income in excess of $200,000 in the current year.[11] Two commentators argued that clients be required to have both $1,000,000 in net worth and at least $500,000 under the adviser's management.

Several commentators addressed the proposal's condition that, in measuring net worth, the net worth of a natural person may include assets held jointly with the person's spouse. One commentator argued that the emphasis on joint ownership is unduly restrictive and that it should be permissible for assets owned individually by a single spouse, that is, not in any joint capacity, to be counted toward the other spouse's net worth for purposes of the rule. Other commentators advocated expanding the net worth standard to permit the aggregation of assets of all family members, whether or not a spousal relationship exists, or to permit the aggregation of assets of employee benefit plans with a common sponsor.

The rule, as adopted, does not incorporate these suggestions. In the Commission's view, the proposed alternative eligibility tests—$500,000 under the adviser's management or $1 million net worth (including assets held jointly with the client's spouse)—will provide sufficient flexibility to advisers and clients while adequately protecting investors within the policies and purposes of the Advisers Act.

In response to concern over how an adviser could verify the net worth of a client so as to be certain that the client was eligible to enter into a performance fee contract under the rule, the rule as adopted provides that an eligible client includes any person who the adviser, immediately prior to entering into the contract, reasonably believes satisfies the net worth test. The Commission emphasizes however, that an adviser would be required to make whatever inquiry is necessary to satisfy this test.

C. Contractual Provisions

1. *Compensation Formula.* Paragraphs (c) (1) and (2) of the rule as adopted are identical to the proposal. These two paragraphs set forth different methods of calculating the compensation paid to

[7] Investment Advisers Act Release No. 865; (48 FR 27771, June 17, 1983). The 1983 proposal set forth a two-part test to determine client eligibility to enter into a performance fee contract. The first part required that the adviser make a finding that the client or his representative was sufficiently knowledgeable about and experienced in financial and business matters to understand the merits and risks of the performance fee contract. The second part required the performance fee contract to relate to a minimum of $150,000 in assets. The proposal also set forth certain information to be disclosed by the adviser to the client.

[8] Investment Advisers Act Release No. 911, May 2, 1984; (49 FR 19524, May 8, 1984).

[9] For a full discussion of the rationale underlying the 1985 proposal, see IA Release No. 961, March 15, 1985 (50 FR 11718). For a similar discussion, see the 1983 proposing release (IA Release No. 865) which also refers to the experience of other regulatory authorities in areas where performance fees are allowed.

[10] Opponents of the rule argued that performance fees would lead to conflicts of interest between advisers and clients and to unnecessary speculation by advisers. They also disagreed that any widespread demand by clients for performance fees exists. Some commentators opposing the rule acknowledged that incentive fees might be appropriate in certain areas where they have been customary (i.e., venture capital and real estate), but argued these fees would not be appropriate for managing a traditional securities portfolio. Opponents also argued that performance compensation would not lead advisers to work or give better advice inasmuch as advisers presumably perform to the best of their ability now under traditional fee arrangements.

[11] Regulation D under the Securities Act of 1933 uses this $200,000 income test in defining one of the categories of persons considered to be accredited investors. *See* 17 CFR 230.501(a)(7).

an adviser for a given period depending on the nature of the securities being managed. With respect to securities for which market quotations are readily available, the compensation formula must include the realized capital losses and unrealized capital depreciation of the securities over the period. For securities for which market quotations are not readily available, the formula must include the realized capital losses of the securities over the period and, if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period must be included.

In response to several comments, the Commission wishes to emphasize that the factors referred to in paragraphs (c)(1) and (2), namely realized *capital* gains and losses and unrealized *capital* appreciation and depreciation, are only the minimum elements which any compensation formula under the rule must contain. Other factors also may be included, as appropriate. For example, paragraphs (c)(1) and (2) do not prohibit a compensation formula which includes income derived from interest and dividends in the determination of an advisory fee under the rule.[12]

In a related manner, in the proposing release, the Commission requested comment on whether a twenty percent (or some other percentage) limitation on the amount of performance fees would be appropriate. Commentators overwhelmingly were opposed to the imposition of a maximum percentage limitation on the amount of a performance fee under the rule. Because the Commission believes that the appropriate level of a performance fee is a matter best decided by the parties to the contract, and because of the various protections of the rule designed to prevent overreaching by the adviser, it has decided not to incorporate a mandatory percentage limitation on fees into the rule.

2. *Cumulative Losses.* Paragraph (c)(3) of the proposed rule required that any compensation paid to the adviser for a given period under the rule be based on the lesser of (i) the gains in the client's account for that period; or (ii) the cumulative gains less the cumulative losses, in the client's account for that period and all prior periods. The conditions of paragraph (c)(3) were modelled largely on prior section 205 exemptive orders to require that performance fees be based on an adviser's over-all performance over the term of a contract.[13]

A sizeable majority of persons commenting on paragraph (c)(3) characterized its cumulative loss provisions as unnecessary or unworkable and urged that the paragraph be modified or eliminated. Many argued that a cumulative loss requirement is inappropriate in light of the other conditions of the rule, especially the eligibility standards which are designed to limit performance fee contracts to persons capable of bearing and understanding their risks. Several claimed that it would increase the likelihood that an adviser would take undue risks in managing an account, particularly if an adviser were in a net loss position because the chance of obtaining a gain would be the only way of earning a fee. Others pointed to possible problems in the mechanical operation of the provision. A suggested alternative proposed by two commentators was the use of a minimum one year masurement period in any performance fee contract.

Upon consideration of these comments, the Commission has decided to revise paragraph (c)(3). As adopted, paragraph (c)(3) requires that any compensation paid to the adviser under the rule be based on the gains less the losses (computed in accordance with paragraphs (c)(1) and (2)) in the client's account for a period of not less than one year.[14] Contracts which measure performance for a period of less than one year would not be exempt under the rule. Performance fee contracts which terminate prior to the expiration of a one year period could provide for compensation to the adviser only if the compensation were not based on the capital gains or appreciation in the client's account.[15]

In the Commission's view, a one year period is sufficiently long generally to achieve the purpose of the proposed cumulative loss provision—precluding an adviser from basing an incentive fee on short term fluctuations in securities prices. At the same time, the flexibility afforded by the one year provision is more appropriate in the context of a general exemptive rule. Finally, use of at least a one year period for measuring performance is common among advisers relying on the statutory exemption for fulcrum fees. Thus, the Commission anticipates that the problems commentators perceived with the proposal's use of an open-ended cumulative loss period will be avoided.[16]

D. Disclosure

The disclosure provisions of the rule as adopted are substantially identical to those of the proposal. Paragraph (d)(3) of the rule regarding disclosure of periods used to measure performance has been amended to reflect the changes made in the cumulative loss provision of the proposal. The amended paragraph now requires disclosure of the periods used throughout the contract as well as the practical effect of these periods on the amount of the performance fee paid to the adviser and the intervals at which the fee is paid.

Several commentators described various factual situations with which advisers might be faced and suggested that the Commission specify in the rule the information which must be disclosed with respect to them. The Commission has decided not to adopt this approach. As stated in the proposing release, the disclosure requirements specifically referred to in paragraph (d) of the rule constitute minimum obligations of the adviser. They have been included because of the broad exemptive nature of the rule and because the Commission believes they reflect matters which may often arise in the context of performance fee contracts. However, the requirements of paragraph (d) should not be read as narrowing, in any manner, the disclosure obligations of

[12] The traditional position of the staff has been that the Section 205(l) prohibition against performance fees does not prohibit a fee based on income derived from dividends and interest. Investment Advisers Act Release No. 721 at note 5 (May 16, 1980).

[13] *See*, for example, *Shaw Management Co., Inc.* (Investment Advisers Act Release Nos. 875 and 878, July 29, 1983 and August 24, 1983, respectively); and *Maier & Siebel, Inc.* (Investment Advisers Act Release Nos. 829 and 830, October 20, 1982 and November 16, 1982, respectively).

[14] Advisers could use any method for receiving payment of the performance fee provided it is consistently applied and fully disclosed to the client. For example, the fee could be paid annually after each year's performance, or the fee could be paid on a rolling basis beginning at the end of a year's performance. However, regardless of the method chosen, no part of the performance fee may be paid for any period of less than one year.

[15] Rule 205-3 does not prohibit an adviser from charging a non-performance related fee, for example a fee based on the percentage of assets under management, in addition to the performance fee. However, the anti-fraud provisions of Section 206 of the Advisers Act may be violated where the total advisory fee charged is higher than the total fee normally charged for similar services without disclosure to clients that similar services may be available elsewhere at a lower fee. *See* Alan D. Pekelner (pub. avail. June 6, 1977).

[16] The use of a minimum one year measurement period under the rule does not affect the staff's general position on termination provisions of advisory contracts. In this regard, in *Robert D. Brown Investment Counsel, Inc.* (July 19, 1984) the staff took the position that an adviser would breach "its fiduciary duty and violate section 206(2) of the Act by entering into a contract for the provision of investment supervisory services which purported to bar a client from terminating the relationship except annually." Advisers relying on Rule 205-3 are expected to comply with the position.

investment advisers under the Act or other applicable law. In this regard, advisers are reminded of their duty under Section 206 of the Act of " 'utmost good faith and full and fair' disclosure of all material facts" (*SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 194 (1963)) and of the requirements of Form ADV regarding the disclosure of advisory fees.[17]

E. Arm's-Length Transaction

Paragraph (e) of the proposed rule required that an investment adviser seeking to enter into a performance fee contract under the rule reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties, and that the client, alone or together with the client's independent agent, fully understand the risks of the proposed method of compensation. One commentator recommended that the language of the proposal requiring that a client "understand the risks of the proposed method of compensation" be amended to state that the client "understand the proposed method of compensation and its risks." The rule as adopted reflects this slight modification. In the Commission's view, the new language better reflects the requirement that the client understand the performance fee arrangement in its totality, not just its risks.

Other commentators were uncertain as to the correct application of the arm's-length standard. They noted many advisers have developed standard contracts and expressed concern that the arm's length requirement may suggest that the terms of each fee arrangement between the adviser and client must be negotiated. The commentators were uncertain whether acceptance by a client of a non-negotiable advisory contract would satisfy the arm's-length requirement. In the Commission's view an arm's length arrangement between the parties is one whose terms correspond to those which independent parties of equal bargaining position would arrive at after negotiation and without overreaching by either party. Use by an adviser of a standard performance fee contract would not preclude the contract from representing "an arm's-length arrangement between the parties" within the meaning of the rule. As noted in the proposing release, paragraph (e) is intended to supplement the disclosure obligations of paragraph (d) of the rule in a manner intended to ensure that the adviser satisfies his affirmative duty of finding that the client thoroughly appreciates the nature of the performance fee contract. In addition, the Commission believes the paragraph (e) provides an important and necessary safeguard in that the effect of this condition is to place on the adviser the burden of demonstrating that its performance fee contracts do not involve overreaching and are limited to clients who can fend for themselves.

G. Transition Rule

Paragraph (f) of the rule as adopted is new. It was added as a result of comments suggesting the need to address the problem created if an adviser not subject to registration, with preexisting performance fee arrangements with clients, later registers with the Commission. Under paragraph (f), paragraphs (b), (c) and (e) of the rule will not apply to an advisory contract between an investment adviser and a client provided the contract was first entered into prior to November 14, 1985 and continues in force after the effective date of the rule. The disclosure provisions of paragraph (d) of the rule, however, would apply with respect to preexisting clients who were parties to any such contract. In addition, the provisions of paragraph (e) would apply to any renewal or extension of such a contract. The transitional relief provided by paragraph (f) would be limited to advisory contracts with advisers who were, at the time the contracts were entered into, not registered or required to be registered as advisers under the Act. Finally, all provisions of the rule would apply to persons who become a party to a performance fee contract with a registered investment adviser after the effective date of the rule.

H. Definitions

Paragraph (g) contains definitions of terms used in the rule. Paragraph (g)(4) defines the term "client's independent agent" to exclude persons whose independence could be comprised because of direct or indirect conflicts of interest.

Several commentators argued that the proposal unnecessarily excluded certain persons from acting as the client's independent agent. It was asserted, for example, that the proposed definition would effectively bar a bank or the trustee of a trust, which held a single share of a publicly held advisory company, from acting as the independent agent of any client who entered into a performance fee contract with the advisory company. A suggested approach was to provide an exception in the rule so that, in the situation referred to above, the bank or trustee would not be prohibited from acting as the client's independent agent if the bank or trust's interest in the adviser was less than a certain *de minimis* amount. The Commission believes that the definition of client's independent agent may be modified in the manner suggested by the comments without compromising investor protections. Paragraph (g)(5)(ii) of the rule as adopted provides that a person may still qualify as an independent agent where his interest in the investment adviser constitutes less than 1/10 of 1% of any class of outstanding securities of the adviser and the interest represents less than 5% of the total assets of the agent.

Another commentator pointed out that the definition would prohibit a relative of a client from acting as the independent agent of the client if the relative were affiliated with the adviser. It was argued that this could be unfair in situations where, for example, the relative was generally responsible for making investments decisions for his parents or children. The Commission is not persuaded that it is appropriate to eliminate the protections provided by the "independent agent" requirement for relatives of person affiliated with the adviser.

Finally, several commentators urged the Commission to amend the definition to allow the limited partner of an investment partnership (or a representative of the limited partner) to act as the independent agent of the partnership. The Commission has decided not to incorporate this suggestion into the rule as adopted. In the Commission's view, a limited partner in a limited partnership may not be in a position to provide the type of objective advice to other potential limited partners that the rule seeks to ensure from client agents.

I. Other Matters

One commentator noted that a number of the individual exemptive orders granted under Section 205 have extended exemptive relief to the books and records requirements of Rules 204-2(b) and (c) under the Advisers Act.[18]

[17] Registered advisers entering into performance fee contracts under the rule would be required to promptly amend Form ADV to reflect their new fee arrangements.

[18] Rule 204-2(b) sets forth specific books and record requirements for registered investment advisers with custody or possession of client securities or funds and Rule 204-2(c) sets forth specific requirements for advisers rendering investment supervisory or management services to clients.

The relief has been provided to the extent the provisions of that rule might require an investment advisor, acting as the general partner of an investment limited partnership, to maintain separate books and records of the underlying interests of each limited partner in the partnership. Advisers obtaining these exemptions have typically represented that they will maintain a capital account for each limited partner which reflects capital contributions, and all income, gains, expenses, losses, withdrawals and distributions.

Upon review of this matter, the Commission has determined that, for purposes of performance fee contracts entered into under Rule 205–3, exemptive relief from the provisions of Rules204–2(b) and (c) is not necessary. Rules 204–2(b) and (c) require that books and records be maintained by advisers on behalf of certain *clients*. Thus, for purposes of this rule, where the client entering into the performance fee contract is an investment limited partnership (or other private investment company), Rules 204–2(b) and (c) would require that the designated books and records be maintained only for the client limited partnership (or other entity) and not the limited partners of the partnership (or equity owners of the private investment company).

A number of commentators pointed out that many states have adopted laws or imposed requirements generally prohibiting advisers from receiving performance fees. The Commission believes that successful operation of a performance fee exemption at the federal level may encourage these states to reexamine their requirements. However, adoption of Rule 205–3 by the Commission does not in any way affect an adviser's obligation to comply with applicable state requirements.

In a related context, a number of commentators expressed concern over the effect of the rule on advisers to employee benefit plans, subject to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq. The Commission emphasizes that adoption of Rule 205–3 in no way affects an adviser's obligation to comply with ERISA. Issues involving performance fee arrangements under ERISA are within the jurisdiction of the Department of Labor which is responsible for administering ERISA's fiduciary provisions.

Several commentators suggested that the Commission should amend Rules 205–1 and 205–2, which set forth requirements for fulcrum fee compensation arrangements. The Commission is not adopting changes in these rules at this time. The Commission's staff will consider, however, whether, in light of the comments received, changes in these rules are necessary.

Summary of the Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Act Analysis, which the Commission prepared in accordance with 5 U.S.C. 603 regarding proposed Rule 205–3, was published in Investment Advisers Act Release No. 961. No comments were received on the analysis and the Commission has prepared a Final Regulatory Flexibility Analysis.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting John Banks-Brooks, Attorney, Division of Investment Management, Securities and Exchange Commission, Room 5130, 450 Fifth Street, NW., Washington, D.C. 20549.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

Text of Rule

Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is amended by adding the following cite for §§ 275.205–3 to read:

Authority: Secs. 203, 204, 211, 54 Stat. 850, as amended, 852, as amended, 855, as amended; 15 U.S.C. 80b–3, 80b–4, 80b–11 * * *; Section 275.205–3 is also issued under Section 206A (15 U.S.C. 80b–6A).

2. By adding § 275.205–3 as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(1) for registered investment advisers.

(a) *General.* The provisions of section 205(1) of the Act shall not prohibit any registered investment adviser from entering into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided,* That all the conditions in this rule are satisfied.

(b) *Nature of the client.* (1) The client entering into the contract subject to this rule must be (i) a natural person or a company, as defined in paragraphs (b)(2) and (g)(1) of this rule, who immediately after entering into the contract has at least $500,000 under the management of the investment adviser; or (ii) a person who the registered investment adviser (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering in to the contract, is a natural person or a company, as defined in paragraphs (b)(2) and (g)(1) of this rule, whose net worth at the time the contract is entered into exceeds $1,000,000. (The net worth of a natural person may include assets held jointly with such person's spouse.)

(2) The term "company" as used in paragraph (b)(1) does not include (i) a private investment company, as defined in paragraph (g)(2) of this rule, (ii) an investment company registered under the Investment Company Act of 1940 or (iii) a business development company, as defined in section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners (other than the investment adviser entering into a contract under the rule) of any such company is a natural person or company described in this paragraph (b).

(c) *Compensation formula.* The compensation paid to the adviser under this rule with respect to the performance of any securities over a given period shall be based on a formula which:

(1) Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;

(2) Includes, in the case of securities for which market quotations are not readily available, (i) the realized capital losses of the securities over the period; and (ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(3) Provides that any compensation paid to the adviser under this rule is based on the gains less the losses (computed in accordance with paragraphs (c) (1) and (2)) in the client's account for a period of not less than one year.

(d) *Disclosure.* In addition to the requirements of Form ADV, the adviser shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract under this rule, all material information concerning the proposed advisory arrangement including the following:

(1) That the fee arrangement may create an incentive for the adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(2) Where relevant, that the adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the adviser believes the index is appropriate; and

(5) Where an adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available, how the securities will be valued and the extent to which the valuation will be determined independently.

(e) *Arms-Length contract.* The investment adviser (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph (g)(1), the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph (g) (4).

(f) *Transition rule.* (1) The proviso of paragraph (a) and paragraphs (b), (c) and (e) of this rule do not apply to any advisory contract (or renewal or extension thereof) between an investment adviser and a client where (i) the contract was entered into prior to and continued in force after November 14, 1985; and (ii) the adviser, at the time the contract was entered into, was not registered or required to be registered as an investment adviser under the Act; provided however, that all provisions of this rule shall apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after the effective date of this rule.

(2) Notwithstanding paragraph (f)(1), the renewal or extension of a contract described therein will be subject to paragraph (e).

(g) *Definitions.* For the purposes of this rule:

(1) The term "company" has the same meaning as in section 202(a) (5) of the Act, but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(2) The term "private investment company" means a company which would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of such Act.

(3) The term "affiliated person" has the same meaning as in section 2(a)(3) of the Investment Company Act.

(4) The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

(i) The investment adviser acting in reliance upon this rule, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser, or an interested person of the investment adviser as defined in paragraph (g)(5);

(ii) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser as defined in paragraph (g)(5); or

(iii) A person with any material relationship between himself (or an affiliated person of such person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the previous two years.

(5) The term "interested person" as used in paragraph (g)(4) means:

(i) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(ii) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if the beneficial or legal interest of the person in any security issued by the investment adviser or by a controlling person of the investment adviser (A) exceeds one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or (B) exceeds 5% of the total assets of the person (seeking to act as the client's independent agent).

(iii) Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment adviser.

(6)(i) the term "securities for which market quotations are readily available" in paragraph (c) has the same meaning as in Rule 2a-4(a) (1) under the Investment Company Act of 1940 [17 CFR 270.2a-4(a)(1)].

(ii) The term "securities for which market quotations are not readily available" in paragraph (c) means securities not described in paragraph (g) (6) (i) of this rule.

(h) An investment adviser entering into or performing an investment advisory contract under this rule is not relieved of any obligations under section 206 of the Adviser Act or of any other applicable provisions of the federal securities laws.

(i) Nothing in this rule relieves a client's independent agent from any obigations to the client under applicable law.

By the Commission.

John Wheeler,

Secretary.

November 14, 1985.

[FR Doc. 85-28007 Filed 11-25-85; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. Rm 79-14]

Natural Gas Policy Act; Order of the Director, OPPR, of Publication of Incremental Pricing Acquisition Cost Thresholds

Issued November 21, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: December 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of December 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to December 1985 are found in the table in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1984]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352	$2.359	$2.366
NGPA section 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797	3.821	3.845
NGPA Section 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428	2.436	2.444
130 percent of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	7.230	7.040	7.290

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA Section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130 percent of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140

[FR Doc. 85-28219 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility; Amount of Benefits; Payment of Benefits, Overpayments, and Underpayments, Reports Required; Income; Resources; and State Supplementation Provisions, Agreements; Payments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules; interim final rules with comment period.

SUMMARY: We are revising our regulations to reflect the provisions of section 2341 of Pub. L. 97-35 (the Omnibus Budget Reconciliation Act of 1981), which amended section 1611(c) of the Social Security Act (the Act). Section 2341 of Pub. L. 97-35 establishes a new period for determining eligibility for Supplemental Security Income (SSI) benefits and the amount of benefit payments, as well as a new method for computing the amount of benefits. These statutory provisions were effective with months beginning April 1982. These regulations provide that eligibility will be based on an individual's income, resources, and other relevant circumstances in a current month rather than in a calendar quarter. The amount of a benefit will, with certain exceptions, be based on an individual's income in the second month prior to the month for which the benefit is to be paid.

These regulations also implement sections 181 and 183 of Pub. L. 97-248 (the Tax Equity and Fiscal Responsibility Act of 1982), which further amended section 1611(c) of the Act. Section 181 provides for the proration of SSI benefits in the initial month of eligibility or re-eligibility. Section 183 provides for counting title II increases to determine the SSI benefit amount for the first, and at the Secretary's option, the second month of an SSI benefit increase.

DATES: These regulations are effective December 1, 1985. The statutory changes regarding retrospective monthly accounting (RMA) which the regulations reflect were effective April 1, 1982. The provisions of sections 181 and 183 of Pub. L. 97-248 were effective October 1, 1982. We shall consider comments on § 416.420 (a) and (b) and § 416.501 on or before January 27, 1986.

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

FOR FURTHER INFORMATION CONTACT: Henry Lerner, Legal Assistant, 3-B-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7463.

SUPPLEMENTARY INFORMATION: We published an NPRM covering the provisions of retrospective monthly accounting (RMA) on October 29, 1981 (46 FR 53449). We are revising our rules under the SSI program to implement the provisions of section 2341 of Pub. L. 97-35 which amends sections 1611(c) and 1612(b)(3) of the Act. Section 2341 establishes a new period for determining eligibility for SSI benefits and the amount of benefit payments, as well as a new accounting system to be used to determine the amount of a benefit payment.

Since the SSI program began, the Act has provided for both eligibility for benefits and the benefit amount to be determined on a calendar-quarter basis.

Under this provision, income received in the third month of a quarter could negate an individual's eligibility for that quarter or reduce benefits for all months of the quarter. As a result, overpayments could occur. Section 1611(c) of the Act as amended by section 2341 of Pub. L. 97-35 provides that eligibility and the benefit amount will be determined for each month rather than on a quarterly basis. An individual's eligibility for SSI benefits for a month is always to be determined on the basis of income, resources, and other relevant factors in that month (the current month). If eligibility is found for a current month, the benefit amount is determined by income in a prior month. The statute provides that the benefit amount can be based on income in either the first or second month prior to the current month. These regulations provide in most cases for use of the second prior month. This is advantageous to claimants as well as the agency because it provides more time to report events that affect benefits and to make the necessary adjustments.

The statute provides certain exceptions to the use of a prior month's income as the basis for determining benefit amounts. In the case of a month of initial eligibility (or re-eligibility in a month after a month of ineligibility), the amount of benefits to be paid will be based on the income and other factors in that same month. While the statute permits the use of the second month's income to determine benefits for the second month of eligibility or re-eligibility, these regulations provide for use of the first prior month as the basis for determining the benefit amount for the second month of initial eligibility or re-eligibility.

Section 2341 of Pub. L. 97-35 authorized the Secretary of Health and Human Services (the Secretary) to determine the conditions for transitional payments—payments for April and May 1982, the first two months the provisions of the statute were effective. The Secretary decided to treat all those who were SSI beneficiaries as of March and April 1982 as though they were newly eligible in April of that year. Thus, both eligibility and the benefit amount for April 1982 were determined on the basis of the income, resources, and other relevant factors that existed in that month. In May 1982, eligibility was determined on the basis of the factors that existed in May, but the benefit amount was determined on the basis of April's income. This transitional rule was indicated in the preamble of the NPRM and is not included in the regulations because it had only one-time effect.

Section 1611(c) of the Act as amended by section 2341 of Pub. L. 97-35 also provides that the Secretary may waive certain limitations on eligibility and payment amount that apply to benefits for individuals in certain institutions (according to sections 1611(e)(1)(A) and 1611(e)(1)(B) of the Act). The Secretary is not acting on this provision at this time.

Discussion of Dates

As previously discussed, we shall consider comments on two provisions of these regulations that have been added as interim final rules to implement sections 181 and 183 of Pub. L. 97-248: (1) proration of benefits for the first month of eligibility at §§ 416.420(b) and 416.501; and (2) treatment of cost-of-living and other increases of social security insurance benefits at § 416.420(a). These provisions have been included in these final regulations because they affect certain provisions of these regulations and their effective date was October 1, 1982. Their omission would result in publication of inaccurate, outdated RMA rules. Section 181 of Pub. L. 97-248 also requires changes in other Part 416 regulations that are not a part of these regulations. These will be accomplished in a separate Notice of Proposed Rulemaking (NPRM) and published in the **Federal Register** with opportunity for comment. Written comments for the new rules in this publication will be considered if received January 27, 1986, and changes will be made, if appropriate.

Subpart B—Eligibility

Since publication of the NPRM, the final recodification of Subpart B (Eligibility) has been published (January 22, 1982, 47 FR 3099). Therefore, the revisions to Subpart B that are included in these final regulations apply to sections in the recodified subpart. There is no change in the substance of the rules from those in the NPRM. Sections 416.200 and 416.204 have been revised to show that eligibility is now determined and redetermined on a monthly rather than a quarterly basis. We have deleted a phrase from § 416.200 which stated that the benefit amount is determined on the same basis as eligibility for benefits. In § 416.203 we have replaced the former explanation of how benefits are determined with a new paragraph that explains that eligibility is based on meeting all the requirements for one month, but that the amount of the benefit for that month is, with certain exceptions, based on income in a prior month. The paragraph is cross-referred to the section in Subpart D that includes a detailed explanation of computation of benefits. We have also deleted the definition of a calendar quarter from § 416.201, as quarters no longer are significant in determining eligibility for benefits. However, the definition is being moved to § 416.1101 because the concept is still used for purposes of determining whether small amounts of income can be excluded because they are received infrequently or irregularly.

Subpart D—Amount of Benefits

We have made editorial changes in some of the sections as published in the NPRM to make them clearer. We have also revised sections that were not included in the NPRM as described later. None of these revisions changes the policies that were spelled out in the NPRM but are added for clarification and to make them parallel companion sections. However, we have included two changes which implement sections 181 and 183 of Pub. L. 97-248 which were effective October 1, 1982. Sections 181 and 183 of Pub. L. 97-248 contain provisions which directly affect sections being revised in these final regulations. Section 181 of Pub. L. 97-248 amends section 1611(c) of the Act to provide that benefits for the month in which an application becomes effective are payable from the date of application or the date an individual first meets all eligibility requirements, whichever is later. Formerly, an application was considered to have been received on the first day of the month in which it was filed and benefits were paid for the entire month if the individual met all eligibility requirements at any point in that month. The revised rule reflecting proration is stated in § 416.420(b) of this subpart. As required by the statute, this rule also provides for proration for a month after a month of ineligibility.

Section 183 of Pub. L. 97-248 also amended section 1611(c)(3) of the Act to provide that a cost-of-living or other increase in Social Security insurance (title II) benefits will be counted in determining the amount of an SSI benefit for the first month and at the Secretary's option, the second month in which there is an SSI benefit increase. This provision is stated in § 416.420(a). The statute made both provisions effective October 1, 1982. We have included these two changes only to the extent that they affect sections already being revised in these final regulations. As stated earlier, we are inviting comments and will make changes, if appropriate. Changes in other sections or other subparts will be published as

separate NPRM's. Section 183 also added section 1611(c)(4) of the Act to provide that if the Secretary determines that reliable information is currently available to her with respect to income or other circumstances, she may determine the current month's benefit amount based on such information. It also provides that the Secretary must state in regulations the circumstances in which such information may be used to determine the SSI benefit amount. These regulations do not include a rule to determine a current month's benefit based on reliable information which is currently available. The Secretary has this matter under consideration, and is not exercising this authority at this time.

Other than the changes just discussed that implement certain provisions of Pub. L. 97-248, the major revision as reflected in the NPRM in this subpart, is in § 416.420 which states the RMA general rule and its exceptions for determining the amount of an SSI benefit. The general rule is that the amount of benefits for a given month is based on income in the second prior month. The rule cannot apply in the first or second month of eligibility so exceptions are necessary. In the first month of eligibility, or in a month after a period of at least a month of ineligibility, the amount of the benefit is based on the income in that same month. In the second month, we will use the same income used for the first month. Therefore, when an individual first becomes eligible for benefits or becomes re-eligible for benefits, the benefit amount for the first 3 months is based on income in the first month of eligibility or re-eligibility. Because we are implementing the statute in this way, in the case of an individual who receives income in that first month which he or she will not receive in the following one or two months, we count that income in determining the individual's benefit amount for the first 3 months of eligibility. We have not identified any significant problems resulting from our decision to implement the statute in this way. We invite comments on this provision of the regulations. We will consider changing the regulations in the future if our method of counting non-recurring income causes problems for recipients. Thereafter, the general rule applies.

Sections 416.410 through 416.414 deal with the rates and amounts of benefits payable in specific situations: to an eligible individual; to an eligible couple; to a qualified individual who has an essential person; and to eligible individuals or couples if either or both are receiving treatment in a medical care facility which receives substantial Medicaid payments for their care so that the $25 Federal benefit rate (FBR) applies. Section 416.413 was not included in the NPRM because no major change was required but is included in these final regulations to make it parallel to §§ 416.410, 416.412, and 416.414. Section 416.414 also was not included in the NPRM but has been added as it was a new section published with the recodification of Subpart B (47 FR 3099). This section is revised to reflect cross-references to § 416.420. For clarification purposes, the NPRM and these final regulations delete a qualification from §§ 416.410 and 416.412 in regard to beneficiaries who live in the household of another. None of these deletions and revisions change or create new policy.

Section 416.422 has been deleted as it related to a quarterly period for computing benefits. Section 416.424, which was revised in the NPRM, has been deleted as the provisions are covered in other sections in the subpart. There are a number of editorial changes in the language in §§ 416.426, 416.432 and 416.435 as published in the NPRM to make them clearer and consistent with other sections. We have updated cross-references throughout the subpart.

Subpart E—Payment of Benefits, Overpayments and Underpayments

We deferred changes in this subpart when we published the NPRM but are including them in these final regulations. We have revised § 416.501 to show that individuals may meet the requirements for eligibility in the current month but not receive a payment for the month. We have also added a provision to §§ 416.501 and 416.502 that is required by enactment of section 181 of Pub. L. 97-248. Section 181 of this statute provides that SSI benefits are not payable for a month of initial eligibility (or re-eligibility in a month after a month of ineligibility) before the date an individual meets all eligibility requirements. Thus, benefit payments will be prorated and will cover the days of such a month that the individual is eligible whether this is a month of initial eligibility or a month following at least a month of ineligibility. It is possible for members of a couple to become eligible on different days of a month and receive different payment amounts for the month if each meets the requirements on different days of the month.

Sections 416.502, 416.503, 416.536, 416.538, and 416.553 have been revised to reflect monthly determinations and monthly amounts. Section 416.538 explains how the amount of an underpayment or overpayment is determined and defines the period used in the determination. This section provides that the period ends with the month the initial determination is made. Regulations previously stated that the period ends with the month immediately preceding the calendar quarter in which the determination is made. We have also updated cross-references wherever appropriate. Section 416.531 has been deleted because it repeats material appropriately covered in Subpart D, Amount of Benefits (§ 416.413).

Some States supplement the Federal SSI monthly benefit and the Social Security Administration administers that supplement for some States. When we do, we add the State supplement to the SSI benefit and issue the total in one monthly check. Section 416.503 now states that the minimum monthly SSI benefit payable is $1. That is, if the amount which otherwise would be due is less than $1, we will raise that amount to $1. This section of the regulations was amended to make clear that we look at the total SSI benefit and the federally administered State supplement to decide if we must round the benefit amount up to $1. That is, if the total of the SSI benefit and the State supplement is less than $1, we raise the total to $1. If the SSI benefit is less than $1 but the total of the SSI benefit and the federally administered State supplement is $1 or more, we do not round up the SSI benefit. We pay the actual amount of the SSI benefit plus the State supplement.

Subpart G—Reports Required

Sections 416.714, 416.726, 416.728, and 416.730 are being revised to show that reports of events which effect SSI eligibility or benefit amount are considered to be late if they are not submitted within 10 days after the close of the month in which the event occurs. Individuals are subject to penalties if reports are not submitted timely. The existing regulations allow 30 days after the close of the calendar quarter in which the event occurs. The time must be shortened because monthly determinations allow less time to process necessary changes. We discuss this 10-day period further in the part of the preamble in which we respond to comments received following publication of the NPRM.

Subpart K—Income

The basic rules on income, its definition and its exclusions, are unchanged. The changes in these regulations are being made because RMA can involve more than one income calculation—one to determine eligibility for a month and the other to determine

the benefit amount for that month. The use of income in a prior month to determine the amount of a benefit for a current month, with a different FBR under certain circumstances, requires detailed explanations. This is particularly true for the rules on deeming of income of others to an SSI recipient. We have made a number of revisions and added some sections in these final regulations that were not in the NPRM. These changes, which are discussed below, are being made since they pertain to RMA and were overlooked when the NPRM was drafted. They are needed for the necessary implementation of the RMA provisions. Only revisions that apply to deeming of income as explained in our discussion in this preamble of § 416.1160 constitute a change of policy from that stated in the NPRM. Throughout the subpart we have corrected cross-references that had become outdated.

Section 416.1100 is revised to include a general statement to show that determinations of income will now be on a monthly rather than a quarterly basis, and that we usually use a prior month's income to determine a benefit amount. Sections 416.1111, 416.1112, 416.1123, and 416.1124 have been revised to reflect the change from quarterly to monthly determinations including, where appropriate, the dollar amounts of exclusion from income. (Section 416.1112(c)(4) was amended to change quarterly to monthly determinations in final rules published May 16, 1983 (48 FR 21943), Determination of Certain Impairment-Related Work Expenses for Substantial Gainful Activity Purposes and for Purposes of Determining Countable Earned Income.) As explained in the preamble to the NPRM, §§ 416.1112 and 416.1124 include a change in the definition of some of the exclusions from income, an "infrequent" receipt. We have qualified the definition to exclude up to $10 or $20 a month (earned or unearned income respectively) if received no more often than once a quarter from a single source. Since the statute as amended provides for the exclusion of certain amounts on a monthly basis, "from a single source" has been added to clarify that each source of income is considered separately in making a frequency determination. This clarification prevents regular monthly payments from a single source being excluded as infrequently received income. While these kinds of payments may be excluded under the regular exclusions of earned and unearned income, we do not think they should be excluded as being received infrequently. These regulations also revise §§ 46.1123 (a) and (d) to reflect monthly determinations. Paragraph (d) of this section was part of the final regulations published February 3, 1982 (47 FR 4985), (Reduction of Retroactive Social Security Benefits) which implemented section 501 of Pub. L. 96-265. In § 416.1124(c)(10) we have added an exception to the general income exclusion to make the information in this paragraph complete. We state that this exclusion does not apply to income in the form of in-kind support and maintenance provided in the household of another (the one-third reduction rule). This exception is not new policy as it has previously been included in our rule in § 416.1131.

Section 416.1130 is the first of a number of sections that cover the rules on in-kind support and maintenance as income. We have expanded paragraph (a) and have added an example to clarify that the value of in-kind support and maintenance, under RMA, is based on the FBR in effect in the month in which the in-kind support and maintenance is received.

In these final regulations (not in the NPRM) we are deleting the last sentence of § 416.1140(a)(1) that indicates if an individual receives in-kind support and maintenance that is not subject to the one-third reduction rule and has no other income, use of the presumed maximum value rule will result in the same benefit as use of the one-third reduction rule. Under RMA rules because of the effect of a change in couple status and the use of a prior month's income to determine the benefit amount, it is not true in all cases that, for individuals with no other income, the presumed maximum value has the same effect on benefits as the one-third reduction rule for valuing in-kind support and maintenance. Both the NPRM and these final regulations delete § 416.1146 which refers to the obsolete quarterly calculation. A new § 416.1147a has been added in these final regulations to describe how we determine countable income and benefit amounts when members of a couple form or separate, and in-kind support and maintenance has been involved. When both members of the couple have been eligible for SSI benefits, the RMA rules apply. The effects of the changes in status were not clearly spelled out in the NPRM.

Sections 416.1160 through 416.1169 cover the rules on deeming of income in general, deeming from an ineligible spouse or ineligible parent to an eligible individual, and from an essential person to a qualified individual. In each section, the procedures and the examples have been revised to reflect monthly rather than quarterly determinations and to show that separate determinations may be necessary for eligibility and benefit amount.

We have made three significant changes in § 416.1160(a)(3)(ii). The changes constitute a more liberal policy on deeming of income from an ineligible spouse or parent under certain circumstances and on deeming the income of essential persons than that provided in the NPRM. We have subdivided the section for clarity. The changes, which are discussed in more detail below, involve using only an eligible individual's own income in a prior month, not including any income deemed in that month, to compute a current month's benefit payment if: (1) Prior to the current month the ineligible spouse or parent whose income was deemed has died or an eligible child has attained age 18; (2) the eligible individual is in a medical care facility which receives substantial Medicaid payments on his behalf so that the maximum possible SSI benefit is $25 in the current month; or (3) the eligible individual has had an essential person but in the current month is not entitled to receive an increased benefit because of the essential person. The first two changes are also reflected in §§ 416.1163(e) and 416.1165(f) which describe deeming of income from a spouse or parent. All three changes are based on a review of the statutory provisions, are made in the interests of equity, and respond to comments from the public. Each change, at most, affects only two months' benefit computations.

Death of Ineligible Spouse or Parent; Eligible Child's Attainment of Age 18

Several commenters were concerned that, under RMA, eligible individuals can be charged with income, including income deemed in a prior month from a spouse or parent, when that income may no longer be available. Except for deeming the income and resources of essential persons and sponsors of aliens, the Secretary has discretion under sections 1614(f) (1) and (2) of the Act to determine the circumstances under which it would be inequitable to deem. Accordingly, these regulations reflect the determination that it would be inequitable to compute benefit payments based on income deemed in a prior month from an ineligible spouse or parent when there has been a change which is wholly beyond the control both of the eligible individual and of the spouse or parent. These regulations recognize only two such situations: death of the ineligible spouse or parent

and an eligible child's attainment of age 18.

$25 Federal Benefit Rate (FBR) Applies

Based on our conclusion that anyone subject to the $25 FBR should have that amount to purchase small comfort items not supplied by the medical care facility, it also would be inequitable to use income deemed from a spouse or parent in a prior month to compute benefit payments when the $25 FBR applies in the current month. Continued use of income deemed in a prior month could mean that an individual would have little or nothing with which to obtain comfort items. These regulations reflect the determination that it would be inequitable to deem under the circumstances described.

Deeming From an Essential Person

These final regulations also state that we do not use income deemed from an essential person in a prior month to determine the benefit amount of an eligible individual (or eligible spouse) beginning with the month the eligible individual (or eligible spouse) is no longer eligible for an increased benefit because of the essential person. Thus, in these circumstances, only the eligible individual's (or eligible spouse's) own income in a prior month is used in determining the benefit amount for the current month. The revision, which is a change from the rule proposed in the NPRM, is consistent with the provisions of the statute that provide for essential persons. Section 211 of Pub. L. 93-66 requires the deeming of the income and resources of an essential person in conjunction with augmented payment (an increment) to the qualified individual. An essential person is an individual who has lived with an SSI recipient since December 1973, did not receive State assistance in December 1973, and does not receive SSI benefits. Since the increment is no longer payable when the individual (or eligible spouse) no longer has an essential person, deeming of the essential person's income should also end for purposes of computing benefit amounts. This revised policy is stated in §§ 416.1168(c) and 416.1169, which explain how and when we deem income from an essential person.

We have made a number of editorial changes throughout the sections that deal with deeming to make them clearer. We have made a conforming change in § 416.1165 to point out that income of a child may include in-kind support and maintenance received from parents when their inocme is no longer deemed to the child.

Subpart L—Resources

The only necessary change in this subpart is in § 416.1232. It reflects the change from quarterly determinations to monthly determinations in regard to cash (and interest) received to replace lost, damaged, or stolen resources. Such cash (and interest) not so spent within nine months will be counted as a resource beginning with the tenth month.

Subpart T—State Supplementation Provisions; Agreements; Payments

Existing regulations in Subpart T require some changes to conform to the provisions of section 2341 of Pub. L. 97-35. In general, monthly periods are used to determine eligibility, and the amount of State supplements administered by us. However, particulars are being accomplished for the most part in the individual agreements that provide for Federal administration of State supplementary payments. We are amending § 416.2020 by deleting references to quarters as they now relate to federally administered State supplementary payments. We are adding a new paragraph (c) to § 416.2030 to explain how State payment levels relate to the new accounting system.

Other Subparts

Subpart M, Suspensions and Terminations, is presently being recodified. Revisions to implement RMA (Section 2341 of Pub. L. 97-35) are included in the recodification. No major changes in this respect are anticipated but the recodification is being published as an NPRM and comments will be invited.

Comments Received Following Publication of the Notice of Proposed Rulemaking Published October 29, 1981 (46 FR 53449)

We received 12 comments in response to the NPRM: seven from State departments that administer programs for the needy and one each from a law center, a private welfare agency, a center on aging, the mayor of a city and an association of homes for the aging. All commented on one or more provisions of the regulations. We have combined those comments that deal with the same issue.

Comment: Five commenters objected to the rule in § 416.728 (a) and (b), the reduction from 30 days after the end of a quarter in which an event occurred to 10 days after the end of a month in which an event occurs for beneficiaries to report changes that affect their SSI eligibility or benefit payment. Most noted that SSI beneficiaries are frequently handicapped by age or disability so that reporting presents problems for them. Some also said that we could retain the 30 days and still make timely changes in eligibility or the amount of benefits. One cited an example that a change in August could be reported by September 30 and give SSA all the month of October to effect the change in the benefit.

Response: Ten days is a shortened period, but a short period is necessary since changes can affect both eligibility for payments and the amount of a payment. Changes must be reported in time for us to change the amount of the check. A change in August that was reported as late as September 30 could not be reflected in the check the recipient receives on October 1. We would have to receive the report by September 10.

It is during the intervening period that we must receive the report, update our records, issued a notice of change, and notify the Treasury Department to change the amount of the check or not to issue it. A longer reporting period would result in more overpayments to individuals. Timely notification of changes so that the correct amount of benefits can be paid is important to the recipient because it eliminates his or her burden of later paying back an overpayment.

We have operated under this requirement (as well as the other provisions of RMA) since April 1982. We are not aware of any hardship that the reporting provision has caused recipients. Our regulations provide that no recipient who has good cause for failure to report on time will be penalized (20 CFR 416.732). In case of hardship which constitutes good cause, the Social Security Administration does not impose a penalty for late reporting.

Comment: Two commenters pointed out that the statute provides an alternative of one or two months for RMA. They believe one prior month to determine the amount of benefits would be preferable to the two prior months that these regulations provide.

Response: The objective of RMA is to promote accurate payment of benefits to beneficiaries and reduce overpayments. It would not be possible to achieve this if we were to pay benefits to individuals on the first of the month on the basis of income for the immediately preceding month. There would be no lapse of time for individuals to report and for us to process the change.

Comment: Three State offices that administer programs for the needy objected to one of the effects of RMA—the fact that beneficiaries receive Social

Security insurance and other program benefit increases in one month but that SSI benefits are not reduced accordingly until the second month thereafter.

Response: Congress has recognized this problem and has amended the statute to remedy it. Section 183 of Pub. L. 97-248 provides that cost-of-living and other increases in Social Security insurance benefits at the time of SSI benefit increases are to be used to determine the amount of SSI benefits for months in which the increase is received. This applied in January and February 1984, the first two months of an SSI benefit increase following enactment of Pub. L. 97-248. It will also apply to the first two months of SSI benefit increases in the future. Section 1611(c) of the Act, as amended, also provides that the Secretary prescribe by regulation the circumstances under which there is reliable information currently available on other kinds of income so that changes in amounts may be used to determine the monthly SSI benefit for the month in which the change occurs. However, we have not yet determined the best way to implement this provision with reference to benefits other than Social Security increases at the time of an SSI benefit increase.

Comment: Three State offices that administer programs for the needy and a private welfare agency are concerned about beneficiaries being charged with income, including income deemed, in a prior month when that income may no longer be available. For example, a couple is divorced or a spouse or a parent dies and his or her income from prior to the divorce or death continues to be counted for two months.

Response: In recognition of this problem, these final regulations have been revised. To determine benefit amounts, we will not use income deemed from an ineligible spouse or ineligible parent in a prior month to determine the benefit amount for a current month when the parent or spouse dies. The Secretary has authority under sections 1614(f) (1) and (2) of the Act not to deem the income of a spouse or parent when it is inequitable to do so. The Secretary considered extending this policy to other situations such as divorce or separation but decided not to do so for the reasons stated in the preamble in the discussion of the deeming provisions. However, we must use an eligible individual's own income in a prior month to compute a benefit payment. There is no statutory authority to do otherwise.

Comment: The law center requests that SSI recipients be sent notices to explain how benefits will be determined during the transitional period, from April 1982 when the new provisions begin to June 1982 when the two-month retrospective accounting applies.

Response: Each SSI recipient received a "stuffer" with the March 1982 check. This stuffer explained the new system and how the conversion would be accomplished. We made the notice as clear as possible. Those who did not understand had a month to call or visit a Social Security office for clarification.

Comment: One State noted that there seemed to be no need for Federal living arrangement codes "B" and "D" and this would affect State supplements. ("B" designates a recipient who is receiving food and shelter while living in the household of another, "D", an individual in a medical care facility and subject to the $25 FBR.) The State saw a problem in that there seemed to be insufficient time to renegotiate agreements for Federal administration of the State's supplementary payments. The State did not intend that individuals receive higher or lower payments in April than they did in March because of the retrospective budgeting.

Response: We continue to use living arrangement codes. The codes are entered in our computer systems and are used for effective and efficient administration of both the Federal SSI and State supplementary payments that we administer for the States. Thus, States continue to determine the amounts of supplements they wish to provide to their recipients in accordance with our system of administration. Under RMA, some individuals may receive more and some individuals may receive less overall income, including the Federal and State benefits, if eligibility continues but a change occurs in living arrangements between the month for which countable income is used to compute a payment and the month for which payment is made. There is no alternative under the statute. Of course, this did not occur in April 1982 because, under the provisions for the transition to RMA, individuals received payments for April based on April's income.

Comment: One State department questioned the legal authority for our counting the same income for more than one month. We count the same income for three months during the transition period and when individuals first become eligible or after a period of ineligibility. The State says this counting is illegal in the Aid to Families With Dependent Children program.

Response: We reviewed our implementation of this aspect of the SSI RMA statute in response to the comment. We have not identified any significant problems resulting from our decision to implement RMA by counting the income from the first month of eligibility in determining the benefit for the second and third months in the period. This policy is clearly authorized by the SSI statute. Section 1611(c)(2) of the Act provides that the amount of an SSI benefit for the month of initial eligibility and the month following a month of ineligibility will be computed prospectively. It further permits but does not require the Secretary to apply this provision to the month immediately following one of those months. The Secretary has decided not to apply prospective accounting in the second month of eligibility or re-eligibility but rather to use one month retrospective accounting as section 1611(c)(1) of the Act clearly allows. In the third month of eligibility or re-eligibility, 2-month retrospective accounting is used under section 1611(c)(1). We will continue to monitor our implementation of this provision and will consider making any changes if problems are identified in the future.

Comment: An association of homes for the aging asks whether § 416.2030(c) permits States to apply a current month accounting system for determining benefit amount under a retrospective system for determining eligibility.

Response: Section 416.2030(c) of these regulations requires the use of the current month to determine eligibility and a retrospective month to determine benefit amount (the converse of the association's proposal). The regulation makes Federal administration of a State's optional supplementation program consistent with the RMA legislation.

Comment: A State objects to the revised definition of infrequent or irregular income. The commenter suggests that the quarterly limits, $30 for earned income and $60 for unearned income, be retained with the proviso that the exclusion be restricted to payments received only once a quarter from a single source.

Response: We have no option to retain the quarterly dollar amounts because the statute, as amended, stipulates the $10 and $20 amounts for monthly payments. As the commenter is aware, in implementing this provision we do limit the exclusion to payments received only once a quarter from a single source in order to eliminate the exclusion of recurring payments.

Comment: A State believes these regulations are unclear in regard to determination of SSI payments for individuals who have been receiving benefits and move from a deeming

situation into a medical care facility where the $25 FBR applies.

Response: In these final regulations, we have rewritten and revised the rules on deeming when an individual is in a medical facility and subject to the $25 FBR. We believe the commenter will now find them clear.

Comment: Several commenters are concerned about loss of benefits for individuals who become subject to the $25 FBR. Rather than having $25 for the first two months of care, these individuals may have no income at all because of RMA. The commenters point out that these individuals will have no monies for personal needs.

Response: Since publication of the NPRM and receipt of these comments, we have reviewed this policy and have revised the rules. While the amended statute requires that income in a prior month be used to establish a benefit amount for the current month it does not specifically require that deemed income in the prior month be included. Also, sections 1614(f) (1) and (2) of the Act give the Secretary the authority to determine the circumstances under which it would be inequitable to deem from an ineligible spouse or parent. The Secretary has determined that it would be inequitable to use income deeded in a prior month from an ineligible spouse or ineligible parent to determine the benefit amount when the $25 FBR applies. However, if nonpayment is caused by the individual's own income in a prior month, the Secretary has no option and must follow the RMA rules.

Comment: Two States report that they have conducted studies on the impact of RMA on their programs for the needy and find that the new accounting will be more costly for them than anticipated. They ask that we request legislation to establish prospective monthly accounting.

Response: The cost features of RMA have been brought to the attention of Congress and have been remedied to a large extent. As discussed earlier in this preamble and in response to comments, RMA will not apply for increases in Social Security benefits, as such increases can be counted in the current month to determine the amount of benefits. Such a policy would be applied at the time of a benefit increase in Social Security and SSI benefits. While section 1611(c)(4) of the Act allows the use of prospective accounting if the Secretary determines there is reliable information currently available, as discussed earlier in this preamble and in response to another comment, the Secretary has this matter under consideration and is not exercising this authority at this time.

Note.—We received several comments on the implications for Medicaid of our proposed RMA rules. The commenters asked that we consider these Medicaid implications before issuing these final RMA rules. SSA is required by statute to use RMA for SSI purposes even though there may be some Medicaid implications. We have asked the Health Care Financing Administration to consider the Medicaid comments.

Justification for Dispensing With Notice of Proposed Rulemaking

Section 1611(c) of the Act, as reflected in these final regulations, provides for monthly determinations of SSI eligibility and benefit amount. This section provides for the use of retrospective monthly accounting to determine benefit amount in most cases. However, in a month of initial eligibility or re-eligibility benefit amount is determined on a prospective basis. Before the final rules implementing RMA could be published, section 1611(c) was further amended by sections 181 and 183 of Pub. L. 97-248. Section 181 provides for prorating SSI benefits in a month of initial eligibility or re-eligibility. Section 183 provides for counting title II increases in the first and, at the Secretary's option, the second month of an SSI benefit increase.

The provisions of sections 181 and 183 affect the regulations set out in these final RMA rules. If the changes required by sections 181 and 183 are not included in these final RMA rules, several sections of the RMA regulations will be incorrect. Therefore, it would be necessary to delay publication of either all of the final regulations on RMA or the specific provisions affected by sections 181 and 183 until the rules reflecting sections 181 and 183 could be promulgated pursuant to prior notice and public comment procedures. The final RMA regulations, particularly § 416.420 that is affected by sections 181 and 183, are crucial to the SSI program since they affect every determination of eligibility and benefit amount. Therefore, the final RMA rules need to be published without delay so the public is aware of how RMA is being implemented. Accordingly, we believe the use of prior notice and comment procedures for the rules implementing sections 181 and 183 of Pub. L. 97-248 would be impracticable and contrary to the public interest.

In addition, we believe that publication of these regulations implementing sections 181 and 183 in proposed form is unnecessary since they merely reflect the statutory requirements and do not represent any meaningful exercise of discretion. The regulations implementing section 181 merely state, as the statute requires, that SSI benefits in the initial month of eligibility or re-eligibility will be prorated to reflect the number of days in the month that the recipient is eligible. The regulations implementing section 183 do exercise the option authorized by the statute of counting the title II increase in the second as well as the first month of an SSI benefit increase. However, the Secretary's exercise of this option is not truly discretionary. Rather, it is the only logical option in light of the manner in which she has chosen to implement RMA. The RMA provision gives the Secretary the choice of determining benefit amount based on one month or two month retrospective accounting. Under the SSI program, title II benefits are counted as income in determining the amount of the SSI benefit. The purpose of section 183 was to alleviate a problem caused under RMA because SSI benefits and title II benefits are increased in the same month but the title II benefit increase is not countable under RMA until either one or two months after the increase occurred. If the Secretary had chosen one month retrospective accounting, counting the title II benefit increase in only the first month of the SSI benefit increase would carry out the purpose of section 183. However, since the Secretary chose two month retrospective accounting, as reflected in the RMA NPRM and in these final regulations, it is necessary for the Secretary to exercise the option under section 183 and count the title II increase in the second month of an SSI benefit increase to carry out the purpose of that provision.

Accordingly, we believe that under 5 U.S.C. 553(b)(B) good cause exists for waiver of notice of proposed rulemaking on the rules implementing sections 181 and 183 since issuance of proposed regulations would be unnecessary, impracticable and contrary to the public interest.

While the notice of proposed rulemaking is being waived we are interested in comments regarding the interim regulations at §§ 416.420 (a) and (b) and 416.501. We will review any comments received, and will revise the rules if appropriate, based on the comments received.

Regulatory Procedures, Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, an economic impact analysis is not required. Any costs have been the direct result of implementing the statute and do not

result from this rule. Retrospective Monthly Accounting (RMA) was implemented by statute on April 1, 1982 at an annual cost of $30 million for FY 1982 and $5 million for FY 1983. We estimate that there will be no program cost or savings from RMA for FY 1984 or FY 1985. The change made in RMA by section 183 of Pub. L. 97-248 (The Tax Equity and Fiscal Responsibility Act of 1982), which deals with the coordination of title II and XVI benefit increases, revised the main feature of RMA which previously resulted in program cost. The use of RMA to determine client benefits may result in benefit reduction for some clients, but these costs are expected to be minor.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance. SSA has clearance for form SSA-8150 (OMB No. 0960-0128) on which beneficiaries are to report income and other factors.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals, with some impact on States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

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

List of Subjects in 20 CFR Part 416

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

Dated: May 8, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 14, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart B—Eligibility

1. The authority citation for Subpart B of Part 416 is revised to read as follows:

Authority: Sec. 1102, 1602, 1611, 1614, and 1631 of the Social Security Act as amended; secs. 211 and 212 of Pub. L. 93-66; 49 Stat. 647 as amended, 86 Stat. 1465, 86 Stat 1466, 86 Stat. 1471, and 86 Stat. 1475; (42 U.S.C. 1302, 1381a, 1382, 1382c, and 1383).

2. Section 416.200 is revised to read as follows:

§ 416.200 Introduction.

You are eligible for SSI benefits if you meet all the basic requirements listed in § 416.202. You must give us any information we request and show us necessary documents or other evidence to prove that you meet these requirements. We determine your eligibility for each month on the basis of your countable income in that month. You continue to be eligible unless you lose your eligibility because you no longer meet the basic requirements or because of one of the reasons given in §§ 416.210 through 416.214.

§ 416.201 [Amended]

3. Section 416.201 is amended by redesignating the definition "calendar quarter" to § 416.1101 and by placing it in alphabetical order.

4. In § 416.203, paragraph (b) is revised to read as follows:

§ 416.203 Initial determinations of SSI eligibility.

* * * * *

(b) *How we determine your eligibility for SSI benefits.* We determine that you are eligible for SSI benefits for a given month if you meet the requirements in § 416.202 in that month. However, we usually determine the amount of your SSI benefits for that month based on your income in an earlier month (see § 416.420). Thus, it is possible for you to meet the eligibility requirements in the given month but receive no benefit payment for that month.

5. In § 416.204, paragraph (c) is revised to read as follows:

§ 416.204 Redeterminations of SSI eligibility.

* * * * *

(c) *The period for which a redetermination applies:* (1) The first redetermination applies to—

(i) The month in which we make the redetermination;

(ii) All the months after the month of first eligibility; and

(iii) Future months until the second redetermination.

(2) All other redeterminations apply to—

(i) The month in which we make the redetermination;

(ii) All the months that came after the last time we made a redetermination; and

(iii) Future months until the next redetermination.

(3) If we made two redeterminations which cover the same month, the later redetermination is the one we apply to that month.

Subpart D—Amount of Benefits

6. The authority citation for Subpart D of Part 416 is revised to read as follows:

Authority: secs. 1102, 1611, 1612, 1617, and 1631 of the Social Security Act as amended; 49 Stat. 647 as amended, 86 Stat. 1466, 86 Stat. 1488, 86 Stat. 1475, (42 U.S.C. 1302, 1382, 1382a, and 1383); Sec. 211 of Pub. L. 93-66, Sec. 182 of Pub. L. 97-248, 96 Stat. 404.

7. Section 416.410 is revised to read as follows:

§ 416.410 Amount of benefits; eligible individual.

The benefit under this part for an eligible individual who does not have an eligible spouse, who is not in a certain kind of institution (see § 416.414), and who is not a qualified individual (as defined in § 416.221), shall be payable at the rate of $314.00 per month beginning January 1, 1984 (however, see § 416.405 with respect to cost-of-living increases), reduced by the amount of such individual's countable income (defined in § 416.1104) as explained in § 416.420.

8. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple neither of whom is in a certain kind of institution (see § 416.414) or is a qualified individual (as defined in § 416.221), shall be payable at the rate of $472.00 per month beginning January 1, 1984 (however, see § 416.405 with respect to cost-of-living increases), reduced by the amount of countable income (defined in § 416.1104) as explained in § 416.420.

9. Section 416.413 is revised to read as follows:

§ 416.413 Amount of benefits; qualified individual.

The benefit under this part for a qualified individual (defined in § 416.221) is payable at the rate for an eligible individual or eligible couple plus an increment for each essential person (defined in § 416.222) in the household, reduced by the amount of countable income of the eligible individual or eligible couple as explained in § 416.420. Beginning January 1, 1984, the amount of the increment is $157.00 per month and this increases when the Federal benefit rate increases (as explained in § 416.405).

10. In § 416.414, paragraph (b) is revised to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

* * * * *

(b) *The benefit rates are—*

(1) *Eligible individual.* The benefit rate for an eligible individual with no eligible spouse is $25 per month. The benefit payment is figured by subtracting the eligible individual's countable income (see Subpart K) from the benefit rate as explained in § 416.420.

(2) *Eligible couple both in medical care facilities.* The benefit rate for a couple is $50 per month. The benefit payment is figured by subtracting the couple's countable income (see Subpart K) from the benefit rate as explained in § 416.420.

(3) *Eligible couple with one spouse in a medical care facility.* The couple's benefit rate equals:

(i) $25 per month for the spouse in the medical care facility; plus

(ii) the benefit rate for an eligible individual (see § 416.410) for the spouse who is not in the medical care facility. The benefit payment for each spouse is figured by subtracting each individual's own countable income in the appropriate month (see § 416.420) from his or her portion of the benefit rate shown in paragraphs (b)(3), (i), and (ii).

* * * * *

11. Section 416.420 is revised to read as follows:

§ 416.420 Determination of benefits; general.

Benefits shall be determined for each month. The amount of the monthly payment will be computed by reducing the benefit rate (see §§ 416.410, 416.412, 416.413, and 416.414) by the amount of countable income as figured under the rules in Subpart K of this part. The appropriate month's countable income to be used to determine how much your benefit payment will be for the current month (the month for which a benefit is payable) will be determined as follows:

(a) *General rule.* We use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. However, if you have been receiving an SSI benefit and receiving a social security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase by including in your income the amount by which your social security benefit in January exceeds the amount of your social security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your social security benefit in February exceeds the amount of your social security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mr. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has social security income of $100 in November, $100 in December, and $105 in January. We find the amount by which his social security income in January exceeds his social security income in November ($5) and add that to his income in November to determine the SSI benefit amount for January.

(b) *Exceptions to the general rule—*

(1) *First month of eligibility or eligibility after a month of ineligibility.* We use your countable income in the current month to determine your benefit amount for the first month you are eligible for SSI benefits or for the first month you become eligible for SSI benefits after at least a month of ineligibility. Your payment for such month will be prorated according to the number of days in the month that you are eligible beginning with the date of your application or the date on which you attain (or reattain) eligibility, whichever is later.

Example: Mrs. Y applies for SSI benefits in September. We use Mrs. Y's countable income in September to determine the amount of her benefit for September. The same would be true if Mrs. Y had been ineligible for SSI benefits in August and again became eligible for such benefits in September.

(2) *Second month of initial eligibility or eligibility after a month of ineligibility.* We use your countable income in the first month prior to the current month to determine how much your benefit amount will be for the current month when the current month is the second month of initial eligibility or the second month following at least a month of ineligibility. However, if you have been receiving both an SSI benefit and a social security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your social security benefit in January exceeds the amount of your social security benefit in December.

Example: Mrs. Y was initially eligible for SSI benefits in September. Her benefit amount for October will be based on her countable income in September (first prior month).

(3) *Third month of initial eligibility or eligibility after a month of ineligibility.* We use your countable income according to the rule set out in paragraph (a) of this section to determine how much your benefit amount will be for the third month of initial eligibility or the third month after at least a month of ineligibility.

Example: Mrs. Y was initially eligible for SSI benefits in September. Her benefit amount for November will be based on her countable income in September (second prior month).

(c) *Payment of benefits.* See Subpart E of this part for the rules on payments and the minimum monthly benefit (as explained in § 416.503).

§ 416.422 [Removed]

12. Section 416.422 is removed.

§ 416.424 [Removed]

13. Section 416.424 is removed.

14. Section 416.426 is revised to read as follows:

§ 416.426 Change in status involving an individual; ineligibility occurs.

Whenever benefits are suspended or terminated for an individual because of ineligibility, no benefit is payable for that month.

15. Section 416.432 is revised to read as follows:

§ 416.432 Change in status involving a couple; eligibility continues.

When there is a change in status involving only the living arrangements (for example, institutionalization or a different household arrangement) of one or both members of an eligible couple and eligibility continues, benefit amounts will be redetermined. Benefit rates and payment amounts will be consistent with §§ 416.410, 416.412, 416.413, and 416.414 and Subpart E, as applicable. Where the change of status involves the formation or dissolution of an eligible couple (for example, marriage, divorce, living apart more than 6 months), a redetermination of the benefit amount shall be made for the months subsequent to the month of such formation or dissolution of the couple in accordance with the following rules:

(a) When one member of a couple lives in the household of another and receives support and maintenance in-

kind from that person, and the other member of the couple is neither in the household of another receiving support and maintenance, nor subject to the $25 Federal benefit rate (§ 416.414), the benefit rate for the couple shall be consistent with § 416.412 or § 416.413, as appropriate. The benefit amount payable to the member of the couple living in the household of another shall be one-third of the amount of the monthly benefit due the couple minus the value of in-kind support and maintenance received by that individual, which will not exceed one-sixth of the benefit rate for a couple. The benefit amount to the remaining member of the couple shall be two-thirds of the amount of the monthly benefit due the couple. This division of the couple's monthly benefit applies for months for which the in-kind support and maintenance received by the member of the couple in the household of another (valued at the maximum of one-sixth of the benefit rate for a couple) is used to compute the monthly benefit amount (see § 416.420).

(b) When only one member of a couple is subject to the $25 Federal benefit rate (see § 416.414), the rate of payment to that member shall be $25 less his or her appropriate countable income (see § 416.420), computed as though he or she were an eligible individual with no spouse. The benefit payment to the other member of the couple will be at the benefit rate for an eligible individual with no spouse (see §§ 416.410 or 416.413, as appropriate, and § 416.420) less his or her appropriate countable income.

(c) When there is a dissolution of an eligible couple and each member of the couple becomes an eligible individual the benefit amount for each person shall be determined individually for each month beginning with the first month after the dissolution. This shall be done by determining the applicable benefit rate for an eligible individual with no eligible spouse according to §§ 416.410 or 416.413 and 416.414 and applying § 416.420(a). See § 416.1147a for the applicable income rules where in-kind support and maintenance is involved.

(d) When two eligible individuals become an eligible couple the benefit amount will be determined for the couple beginning with the first month following the month of the change. This shall be done by determining which benefit rate to use for an eligible couple and applying the requirements in §§ 416.420(a) and 416.432 (a) and (b).

16. Section 416.435 is revised to read as follows:

§ 416.435 Change in status involving a couple; ineligibility occurs.

Whenever benefits are suspended or terminated for both members of a couple because of ineligibility, no benefits are payable for that month. However, when benefits are suspended or terminated for one member of a couple because of ineligibility for a month, the member who remains eligible assumes the eligibility status of an eligible individual without an eligible spouse for such month and the benefit rate and payment amount will be determined as an eligibile individual for the month.

Subpart E—Payment of Benefits, Overpayments, and Underpayments

17. The authority citation for Subpart E of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1614, 1631, 1633, 86 Stat. 1465, 1466, 1473, 1475, 1476, 1477, 1478, (42 U.S.C. 1302, 1381, 1381a, 1382, 1382c, 1383, 1383b).

18. Section 416.501 is revised to read as follows:

§ 416.501 Payment of benefits: General.

Payment of SSI benefits will be made for the month of initial eligibility and each subsequent month provided all requirements for eligibility (see § 416.202) and payment (see § 416.420) are met. In the month the individual first meets all eligibility requirements and the month in which an individual re-establishes eligibility after at least a month of ineligibility, benefits are paid for such a month beginning with the date in the month on which the individual meets all eligibility requirements. In some months, while the factors of eligibility based on the current month may be established, it is possible to receive no payment for that month if the factors of eligibility for payment are not met. Payment of benefits may not be made for any period that precedes the date on which an application is filed or, if later, the date all conditions for eligibility and payment are met. It is possible for a couple to become eligible in the same month but as of different dates and receive different payment amounts for that month if they file their applications on different dates or if they meet the necessary requirements (for example, age) on different dates.

19. Section 416.502 is revised to read as follows:

§ 416.502 Manner of payment.

For the month an individual first meets all eligibility requirements or re-establishes eligibility after a month of ineligibility, an SSI check will be issued on or after the day of the month on which the individual becomes eligible or re-eligible to receive benefits. In all other months, a check will be issued at the beginning of each month and represents payment for that month. Unless otherwise indicated, the monthly amount for an eligible couple will be divided equally and paid in separate checks to each individual.

20. Section 416.503 is revised to read as follows:

§ 416.503 Minimum monthly benefit amount.

If you receive an SSI benefit that does not include a State supplement the minimum monthly SSI benefit amount payable is $1. When an SSI benefit amount of less than $1 is payable, the benefit amount will be increased to $1. If you receive an SSI benefit that does include a State supplement and the SSI benefit amount is less than $1 but when added to the State supplement exceeds $1, the SSI benefit amount will not be increased to $1. Rather, we pay the actual amount of the SSI benefit plus the State supplement.

§ 416.520 [Amended]

21. In § 416.520, paragraph (b)(2) is amended by changing the cross reference "§§ 416.203 through 416.205 [5]" at the end of the paragraph to "Subpart P".

§ 416.531 [Removed]

22. Section 416.531 is removed.

§ 416.532 [Amended]

23. In § 416.532, paragraph (b) is amended by changing the cross reference "§ 416.242 [5]" in the parenthetical phrase to read "§ 416.221".

24. Section 416.536 is revised to read as follows:

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed an application (where required) for benefits and met all conditions of eligibility for benefits. An underpayment, including any amounts of State supplementary payments which are due and administered by the Social Security Administration, is:

(a) Nonpayment, where payment for a month was due but was not made; or

(b) Payment of less than the amount due for any month.

§ 416.537 [Amended]

25. In § 416.537, paragraph (b)(1) is amended by changing the cross reference "§ 416.951" to "§ 416.931", and paragraph (b)(2) is amended by changing the cross reference "§ 416.713" to "§ 416.724".

26. Section 416.538 is revised to read as follows:

§ 416.538 Amount of underpayment or overpayment.

The amount of an underpayment or overpayment is the difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period. An overpayment or underpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month the initial determination of overpayment or underpayment is made. With respect to the period established, there can be no underpayment to a recipient or his eligible spouse if more than the correct amount payable under title XVI of the Social Security Act has been paid (whether or not adjustment or recovery of any overpayment for that period has been waived under the provisions of §§ 416.550–416.555) a subsequent initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that the basis of the prior overpayment remains the same. Where an apparent overpayment has been detected but determination of the overpayment has not been made (see § 416.558(a)), a determination and payment of an underpayment which is otherwise due cannot be delayed unless a determination with respect to the apparent overpayment can be made before the close of the month following the month in which the underpaid amount was discovered. Further, any underpayment amount apparently due the surviving eligible spouse on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient under section 1631(e) of the Act (see § 416.537(b)(2)).

27. In § 416.553, paragraph (b) is revised as follows: (The introductory paragraph is repeated for reader convenience.)

§ 416.553 Waiver of adjustment or recovery—defeat the purpose of the supplemental security income program.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery of the overpayment would defeat the purpose of the supplemental Security income program.

* * * * *

(b) *Alternative criteria for individuals currently eligible for SSI benefits.* We consider an individual or couple currently eligible for SSI benefits to have met the test in paragraph (a) of this section if the individual's or couple's current monthly income (that is, the income upon which the individual's or couple's eligibility for the current month is determined) does not exceed—

(1) the applicable Federal monthly benefit rate for the month in which the determination of waiver is made (see Subpart D of this part); plus

(2) The $20 monthly general income exclusion described in §§ 416.1112(c)(3) and 416.1124(c)(10); plus

(3) The monthly earned income exclusion described in § 416.1112(c)(4); plus

(4) The applicable State supplementary payment, if any (see Subpart T of this part) for the month in which determination of waiver is made.

For those SSI recipients whose income exceeds these criteria, we follow the general rule in paragraph (a) of this section.

Subpart G—Reports Required

28. The authority citation for Subpart G of Part 416 continues to read as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act as amended; sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended; 86 Stat. 1466, 1468, 1470, 1471, and 1475; 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383.

§ 416.714 [Amended]

29. In § 416.714, paragraph (a) is amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the second sentence.

§ 416.726 [Amended]

30. In § 416.726, paragraphs (a) and (b) are amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the first sentence of each and by removing the examples in each paragraph.

§ 416.728 [Amended]

31. In § 416.728, paragraphs (a) and (b) are amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the first sentence of each and by removing the examples in each paragraph.

§ 416.730 [Amended]

32. In § 416.730, paragraph (a) is amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the second sentence.

33. In § 416.730, paragraph (b) is amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the first sentence.

Subpart K—Income

34. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act as amended; sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended; 86 Stat. 1466, 1468, 1470, 1471, and 1475; 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383. Sec. 202 of Pub. L. 96–265, 94 Stat. 449; 42 U.S.C. 1382c.

35. Section 416.1100 is revised to read as follows:

§ 416.1100 Income and SSI eligibility.

You are eligible for supplemental security income (SSI) benefits if you are an aged, blind, or disabled person who meets the requirements described in Subpart B and who has limited income and resources. Thus, the amount of income you have is a major factor in deciding whether you are eligible for SSI benefits and the amount of your benefit. We count income on a monthly basis. Generally, the more income you have the less your benefit will be. If you have too much income, you are not eligible for a benefit. However, we do not count all of your income to determine your eligibility and benefit amount. We explain in the following sections how we treat your income for the SSI program. These rules apply to the Federal benefit and to any optional State supplement paid by us on behalf of a State (§ 416.2025) except as noted in Subpart T and in the Federal-State agreements with individual States. While this subpart explains how we count income, Subpart D of these regulations explains how we determine your benefits, including the provision that we generally use countable income in a prior month to determine how much your benefit amount will be for a month in which you are eligible (§ 416.420).

36. In § 416.1101, the definitions are amended as follows: "Calendar quarter" is added; "child" is amended by removing the cross reference to § 416.1050 and adding § 416.1856 in lieu thereof; "Federal benefit rate" is revised and "Spouse" is amended by removing the cross reference to §§ 416.1001

through 416.1041 and adding §§ 416.1806 and 416.1811 in lieu thereof.

§ 416.1101 Definition of terms.

As used in this subpart—

"Calendar quarter" means a period of three full calendar months beginning with January, April, July, or October.

* * * * *

"Federal benefit rate" means the monthly payment rate for an eligible individual or couple. It is the figure from which we substract countable income to find out how much your Federal SSI benefit should be. The Federal benefit rate does not include the rate for any State supplement paid by us on behalf of a State.

* * * * *

§ 416.110 [Amended]

37. In § 416.1110(b), the last sentence is amended by removing the cross reference to § 404.1050 and adding § 404.1080 in lieu thereof.

38. In § 416.1111, the second sentence in paragraph (a) is amended by removing the words "calendar quarter" and adding the word "month" in lieu thereof and paragraph (b) is revised to read as follows:

§ 416.1111 How we count earned income.

* * * * *

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. However, we divide the total of these earnings equally among the months in the taxable year to get your earnings for each month. For example, if your net earnings for a taxable year are $2,400, we consider that you received $200 in each month. If you have net losses from self-employment, we divide them over the taxable year in the same way, and we deduct them only from your other earned income.

* * * * *

39. In § 416.1112, the third sentence in paragraph (a) is amended by removing the words "in the calendar quarter" and adding the words "in the month" in lieu thereof and paragraphs (c) (1), (2) and (3) are revised to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) *Other earned income we do not count.* We do not count as earned income—

(1) Up to $10 of earned income in a month if it is infrequent or irregular; that is, if you receive it only once in a calendar quarter from a single source or if you cannot reasonably expect it. If the total amount of your infrequent or irregular earned income for a month exceeds $10, we cannot use this exclusion;

(2) Up to $400 per month but not more than $1,620 in a calendar year, if you are a blind or disabled child who is a student regularly attending school as described in § 416.1861;

(3) Any portion of the $20 monthly exclusion in § 416.1124(c)(10) which has not been excluded from your unearned income in that same month;

* * * * *

§ 416.1123 [Amended]

40. In § 416.1123, the second sentence is amended by removing the words "calendar quarter" and adding the word "month" in lieu thereof and in paragraph (d) the third sentence is amended by removing the word "quarter" and adding the word "month" in lieu thereof.

41. In § 416.1124, paragraph (a) is amended by removing the word "you" in the first sentence and adding the word "your" in lieu thereof and by removing the words "in the calendar quarter" and adding the words "in the month" in lieu thereof in the third sentence and by removing the amount "$60" and adding "$20" in the last sentence in lieu thereof and paragraphs (c)(6) and (c)(12) are revised to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) *Other unearned income we do not count.* We do not count as unearned income—

* * * * *

(6) Up to $20 of unearned income in a month if it is infrequent or irregular; that is, if you receive a type of income listed in § 416.1121 only once during a calendar quarter from a single source or if you cannot reasonably expect it. If the total amount of infrequent or irregular unearned income in a month exceeds $20, we cannot use this exclusion;

* * * * *

(12) The first $20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see § 416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility. The $20 exclusion does not apply to a benefit based on need that is totally or partially funded by the Federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions is excluded totally from income as described in § 416.1124(c)(2). If you have less than $20 of unearned income in a month and you have earned income in that month, we will use the rest of the $20 exclusion to reduce the amount of your countable earned income; and

* * * * *

42. In § 416.1130, paragraph (a) is revised to read as follows:

§416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) the Federal benefit rate that applies for the purpose of valuing in-kind support and maintenance is the rate for the month in which you receive the in-kind support and maintenance.

Example: Joe receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives by reason of the fact that he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). When the SSI benefit rate is increased in January, his SSI benefit for that month is based on the value of the in-kind support and maintenance he received in November (measured as one-third of the Federal benefit rate for November).

* * * * *

§ 416.1131 [Amended]

43. In § 416.1131, paragraph (a) is amended by removing the words "reduce the Federal benefit rate by one-third" and adding the words "count one-third of the Federal benefit rate as additional income," in lieu thereof and paragraph (b) is amended by removing the words "is a flat reduction of the Federal benefit rate. It".

§ 416.1132 [Amended]

44. In § 416.1132, paragraph (b)(1) is amended by removing the cross reference § 416.1005 and adding § 416.1806 in lieu thereof.

§ 416.1140 [Amended]

45. In § 416.1140, paragraph (a)(1) is amended by removing the last sentence.

§ 416.1146 [Removed]

46. Section 416.1146 is removed.

47. In § 416.1147 all cross-references to § 416.231 are removed and § 416.211(b) is added in lieu thereof and paragraph

(a) is amended by removing the cross reference § 416.1040 and adding § 416.1830 in lieu thereof, and (c) is revised to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

* * * * *

(c) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals. This begins with the first calendar month one of you is in the medical institution. The one living in another person's household is eligible at an eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the rate described in § 416.414(b)(1).

* * * * *

48. Section 416.1147a is added to read as follows:

§ 416.1147a Income rules in change-of-status situations involving in-kind support and maintenance.

(a) *General.* This section explains the rules for determining countable income, including in-kind support and maintenance, when eligible individuals become an eligible couple or when an eligible couple becomes eligible individuals. Generally, under retrospective monthly accounting, income in a prior month, including in-kind support and maintenance, affects benefit amounts for a current month. The prior month may be the first or second month prior to the current month (as explained in § 416.420(a)) and the rules in this section apply when a change-of-status becomes effective between the prior month and the current month.

(b) *Eligible individuals become an eligible couple.* If you and your spouse have been eligible individuals and become an eligible couple, we combine the earned and unearned income each of you had as an eligible individual in the prior month. If either or both of you received in-kind support and maintenance, we include its value as income. This may be one-third of the Federal benefit rate that applied in the prior month for one or both of you who lived in the household of another. It may be the presumed maximum value (one-third of the Federal benefit rate plus $20 as explained in § 416.1140) for one or both of you as appropriate. It may also be a combination of the two if each of you received income in one of these forms. We also include income deemed to either or both of you in the prior month.

(c) *Eligible couple becomes one or two eligible individuals.* If you are an eligible individual in the current month but were a member of an eligible couple in the prior month, we determine your countable income in the prior month separately from that of your spouse. We determine the value of any in-kind support and maintenance you and your spouse received in the prior month using the rules contained in § 416.1147. For example, if both of you lived in the household of another and the one-third reduction applied, each of you would have income equal to one-sixth of the Federal benefit rate for a couple. Also, for example, if you received in-kind support and maintenance and the presumed maximum value applied, you would have income equal to one-sixth of the Federal benefit rate for a couple, plus $10. We divide any other income you had as an eligible couple according to who owned the income. If ownership of jointly owned income cannot be determined, we allocate one-half of it to you.

§ 416.1148 [Amended]

49. In § 416.1148 the first sentence of paragraph (b)(2) is amended by removing "21" and adding "18".

50. In § 416.1149, paragraphs (c)(1) and (c)(2)(ii) are revised to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) *Rules for temporary absence in certain circumstances.*

(1) If you enter a medical care facility that receives Medicaid payments for your care (as described in § 416.211(b)) with the intention of returning to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month you enter or leave the facility. During any full calendar month you are in the medical care facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider food or shelter provided during a medical confinement to be income.

(2) * * *

(ii) However, if you are a child under age 18, and your permanent living arrangement is with an ineligible parent or essential person (§ 416.222), we follow the rules in § 416.1148(b)(2). When you reach age 18, or if you are under age 18 and deeming does not apply, we consider the circumstances of your permanent living arrangement to value any in-kind support and maintenance you receive.

51. Section 416.1160 is amended by adding paragraph (a)(3) to read as follows:

§ 416.1160 What is deeming.

(a) *General.* * * *

(3) We deem income to determine whether you are eligible for a benefit and to determine the amount of your benefit. However, we consider this income in different months for each purpose.

(i) *Eligibility.* We consider how much income your ineligible spouse, ineligible parent, or essential person has in the current month that is deemed to you to determine whether you are eligible for SSI benefits for that month.

(ii) *Amount of benefit.* We consider the income of your ineligible spouse, ineligible parent or essential person in the second month prior to the current month to determine your benefit amount for the current month. *Exceptions:* (A) To determine your benefit amount for the first month you are eligible or for a month after you have been ineligible for at least a month, we use the same countable income that we use to determine your eligibility. In the following month (the second month) we use the same countable income that we used in the preceding month to determine your benefit amount. (B) To determine the amount of your benefit in the current month, if there are certain changes in your situation which we list below, we use only your own countable income in a prior month, excluding any income deemed to you in that month from an ineligible spouse or parent. These changes are the death of your spouse or parent, your attainment of age 18, or your becoming subject to the $25 Federal benefit rate (§ 416.211(b)). (C) To determine the amount of your benefit for the current month, we do not use income deemed from your essential person beginning with the month you can no longer qualify for the essential person increment (§ 416.413). We use only your own countable income in a prior month to determine the amount of your benefit for the current month.

* * * * *

52. In § 416.1161, revise paragraph (c) to read as follows. The introductory paragraph is shown for reader convenience.

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

The first step in deeming is determining how much income your ineligible spouse, ineligible parent, or essential person has. We do not always include all of their income when we determine how much income to deem. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or parent we must determine the amount of income of any ineligible children in the household.

* * * * *

(c) *For an ineligible child.* Although we do not deem any income to you from an ineligible child, we reduce his or her allocation if the ineligible child has income (see § 416.1163(b)(2)). For this purpose, we do not include any of the child's income listed in paragraph (a) of this section. In addition, if the ineligible child is a student (see § 416.1861), we exclude any of the child's earned income up to $400 a month but not more than $1,620 per year.

53. In § 416.1163, paragraphs (b)(1), (c), and (d) are revised to read as follows. Paragraphs (e) and (f) are added to read as follows. The introductory paragraph is shown for reader convenience.

§ 416.1163 How we deem income to you from your ineligible spouse.

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order:

* * * * *

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. *Exception:* We do not allocate for children who are receiving public income-maintenance payments (see § 416.1142(a)).

(1) The allocation for each ineligible child is one-half of the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in § 416.1160(a)(3)(ii) applies.

* * * * *

(c) *Determining your eligibility for SSI.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than one-half of the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than one-half of the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple.

(d) *Determining your SSI benefit.* (1) In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (c) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(a)(3)(ii) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

(2) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the lesser of the amount computed under the rules in paragraph (c)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate.

(e) *Special rules for couples when a change in status occurs.* We have special rules to determine how to deem your spouse's income to you when there is a change in your situation.

(1) *Ineligible spouse becomes eligible.* If your ineligible spouse becomes eligible for SSI benefits, we treat both of you as newly eligible. Therefore, your eligibility and benefit amount for the first month you are an eligible couple will be based on your income in that month. In the second month, your benefit amount will also be based on your income in the first month.

(2) *Spouses separate or divorce.* If you separate from your ineligible spouse or your marriage to an ineligible spouse ends by divorce, we do not deem your ineligible spouse's income to you to determine your eligibility for benefits beginning with the first month following the event. If you remain eligible, we determine your benefit amount by following the rule in paragraph (d) of this section provided deeming from your spouse applied in the prior month.

(3) *Eligible individual begins living with an ineligible spouse.* If you begin to live with your ineligible spouse, we deem your ineligible spouse's income to you in the first month thereafter to determine whether you continue to be eligible for SSI benefits. If you continue to be eligible, we follow the rule in § 416.420(a) to determine your benefit amount.

(4) *Ineligible spouse dies.* If your ineligible spouse dies, we do not deem your spouse's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(5) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible spouse's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(f) *Examples.* These examples show how we deem income from an ineligible spouse to an eligible individual in cases which do not involve any of the exceptions in § 416.1160(a)(3)(ii). The Federal benefit rates used are those effective January 1, 1984.

Example 1. In September 1984, Ted, an aged individual, lives with his ineligible spouse, Alice, and their ineligible child, Mike. Ted has a Federal benefit rate of $314 per month. Alice receives $252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike $157 (one-half the September Federal benefit rate for an

eligible individual). We subtract the $157 allocation from Alice's $252 unearned income, leaving $95. Since Alice's $95 remaining income is not more than $157, which is one-half the September Federal benefit rate for an eligible individual, we do not deem any income to Ted. Instead, we compare only Ted's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Ted's own countable income is less than his Federal benefit rate, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Alice, in July and subtract this income from the appropriate Federal benefit rate for September.

Example 2. In September 1984, George, a disabled individual, lives with his ineligible spouse, Ellen, and ineligible child, Christine. George and Christine have no income. Ellen has earned income of $401 a month and unearned income of $252 a month. Before we deem any income, we allocate $157 to Christine. We take the $157 allocation from Ellen's $252 unearned income, leaving $95 in unearned income. Since Ellen's total remaining income ($95 unearned plus $401 earned) is more than $157, which is one-half the September Federal benefit rate for an eligible individual, we compute the combined countable income as we do for a couple. We apply the $20 general income exclusion to the unearned income, reducing it further to $75. We then apply the earned income exclusion ($65 plus one-half the remainder) to Ellen's earned income of $401, leaving $168. We combine the $75 countable unearned income and $168 countable earned income, and compare it ($243) with the $472 September Federal benefit rate for a couple, and determine that George is eligible. Since George is eligible, we determine the amount of his benefit by substracting his countable income in July (inculding any deemed from Ellen) from September's Federal benefit rate for a couple.

Example 3. In September 1984, Joe, a disabled individual, lives with his ineligible spouse, Mary, who earns $201 per month. Joe receives a pension (unearned income) of $100 a month. Since Mary's income is greater than $157, which is one-half of the September Federal benefit rate for an eligible individual, we deem all of her income to be available to both Joe and Mary and compute the combined countable income for the couple. We apply the $20 general income exclusion to Joe's $100 unearned income, leaving $80. Then we apply the earned income exclusion ($65 plus one-half of the remainder) to Mary's $201, leaving $68. This gives the couple total countable income of $148. This is less than the $472 September Federal benefit rate for a couple, so Joe is eligible based on deeming. Since he is eligible, we determine the amount of his benefit based on his income (including any deemed from Mary) in July.

54. Section 416.1165 is revised to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent.

If you are a child under age 18 living with one or both of your parents, we follow the rules in paragraphs (a) through (d) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (e) of this section. The rules in paragraph (f) of this section apply to changes in your family situation.

(a) *Determining your ineligible parent's income.* We first determine how much current monthly earned and unearned income your ineligible parents have, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Allocations for your ineligible parents.* We next deduct allocations for your parents. These vary depending on the type of income they have. We do not allocate for a parent who is receiving public income-maintenance payments (see § 416.1142(a)).

(1) *All parental income is earned.* If your parents have only earned income, we allocate $85 (the sum of the $20 general income exclusion and the $65 earned income exclusion) plus—

(i) Double the Federal benefit rate for the month for a couple if both parents live with you; or

(ii) Double the Federal benefit rate for the month for an individual if only one parent lives with you.

(2) *All parental income is unearned.* If your parents have only unearned income, we allocate $20 (the amount of the general income exclusion) plus—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(3) *Parental income is both earned and unearned.* If your parents have both earned and unearned income, we allocate for them as follows. We first deduct $20 from their combined unearned income. If they have less than $20 in unearned income we subtract the balance of the $20 from their combined earned income. Next, we subtract $65 plus one-half the remainder of their earned income. We total the remaining earned and unearned income, and subtract—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(d)(1) *When you are the only eligible child.* If you are the only eligible child in the household, we deem any of your parents' current monthly income that remains to be your unearned income. We combine it with your own unearned income and apply the exclusions in § 416.1124 to determine your countable unearned income in the month. We add this to any countable earned income you may have and subtract the total from the Federal benefit rate for an individual to determine whether you are eligible for benefits.

(2) *When you are not the only eligible child.* If your parents have more than one eligible child in the household, we divide the parental income to be deemed equally among the eligible children.

(3) *When one child's income makes that child ineligible.* We do not deem more income to an eligible child than the amount which, when combined with the child's own income, reduces his or her SSI benefit to zero. (For purposes of this paragraph, an SSI benefit includes any federally administered State supplement.) If the share of parental income that would be deemed to a child makes that child ineligible (reduces the amount to zero) because that child has other countable income, we deem any remaining parental income to other eligible children in the household in the manner described in paragraph(d) (2) and (3) of this section.

(e) *Determining your SSI benefit.* In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible parents' income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(a)(3)(ii) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility) we deem your ineligible parents' income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible parents' income in that month to determine whether you are eligible for a benefit but we again use your countable income (including any that was deemed to you) in the first month to determine the amount of your benefit.

(f) *Special rules for a change in status.* We have special rules to begin or stop deeming your ineligible parents' income to you when a change in your family situation occurs.

(1) *Ineligible parent becomes eligible.* If your ineligible parent becomes eligible for SSI benefits, there will be no income to deem from that parent to you to determine your eligibility for SSI benefits beginning with the month your parent becomes eligible. However, to

determine your benefit amount, we follow the rule in § 416.420.

(2) *Eligible parent becomes ineligible.* If your eligible parent becomes ineligible, we deem your parent's income to you in the first month of the parent's ineligibility to determine whether you continue to be eligible for SSI benefits. However, if you continue to be eligible, in order to determine your benefit amount, we follow the regular rule of counting your income in the second month prior to the current month.

(3) *Ineligible parent dies.* If your ineligible parent dies, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(a)(3)(ii)(B)). However, if you live with two ineligible parents, and one dies, we continue to deem income from the surviving parent.

(4) *Ineligible parent and you no longer live in the same household.* If your ineligible parent and you no longer live in the same household, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the first month following the month in which one of you leaves. However (if you continue to be eligible), to determine your benefit amount we follow the rule in § 416.420 of counting your income including income deemed from your parent in the second month prior to the current month.

(5) *Ineligible parent and you begin living in the same household.* If your ineligible parent and you begin living in the same household, we consider that parent's income to determine whether you continue to be eligible for SSI benefits beginning with the month following the month of change. However (if you continue to be eligible), to determine your benefit amount, we follow the rule in § 416.420 of counting your income in the second month prior to the current month.

(6) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent.

(7) *You attain age 18.* In the month following the month in which you attain age 18 and thereafter, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits. In determining your benefit amount beginning with the month following your attainment of age 18, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(a)(3)(ii)(B)). Your income for the current and subsequent months must include any income in the form of cash or in-kind support and maintenance provided by your parents. If you attain age 18 and stop living in the same household with your ineligible parent, these rules take precedence over paragraph (b)(4) of this section which requires continued use of deemed income in the benefit computation for 2 months following the month of change.

(g) *Examples.* These examples show how we deem an ineligible parent's income to an eligible child when none of the exceptions in § 416.1160(a)(3)(ii) applies. The Federal benefit rates are those effective January 1, 1984.

Example 1. Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $265 per month and his father earns $915 per month. Henry and his brother have no income. First, we allocate $157 for Henry's brother from the unearned income of $265. This leaves $108 in unearned income. Since the remaining parental income is both earned and unearned, we reduce the unearned income further by $20, leaving $88. We then reduce the $915 of earned income by $65 plus one-half of the remainder, leaving $425. From the total remaining income of $513, we subtract $472 (the Federal benefit rate for a couple), as the allocation for the parents, leaving $41 to be deemed as Henry's unearned income. We then apply Henry's $20 general income exclusion which reduces his countable income to $21. Since that amount is less than the $314 Federal benefit rate for an individual, Henry is eligible. We determine his benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives $404 a month in unearned income. Since all the mother's income is unearned, the amount we allocate for her needs is $334 (the $314 Federal benefit rate for an individual, plus the $20 general income exclusion). After subtracting this allocation from her $404, we divide the remaining $70 equally between the two children ($35 each) as unearned income. We then apply the $20 general income exclusion leaving each child with $15 countable income. The $15 income is less than the $314 Federal benefit rate for an individual, so the children are eligible. We determine each child's benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

55. Section 416.1166 is amended by revising paragraphs (c), (d), and (e) to read as follows. The introductory paragraph is repeated for reader convenience.

§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child. For the purpose of this section, SSI benefits include any federally administered State supplement. We then follow the rules in § 416.1165(d) to determine the child's eligibility for SSI benefits and in § 416.1165(e) to determine the benefit amount.

* * * * *

(c) *Determining your eligibility for SSI benefits and benefit amount.* We then follow the rules in § 416.1163(c) to find out if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow (d) below to determine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in § 416.1163(d).

(d) *Determining your child's eligibility and amount of benefits.* (1) If you are eligible for SSI benefits after your spouse's income has been deemed to you, we do not deem any income to your child. To determine the child's eligibility, we subtract the child's own countable income without deeming from the benefit rate for an individual.

(2) If you are not eligible for SSI benefits after your ineligible spouse's income has been deemed to you, we deem to your eligible child any of your spouse's income which was not used to reduce your SSI benefits to zero.

(e) *Examples.* These examples show how we deem income to an eligible individual and an eligible child in the same household. The Federal benefit rates used are those effective January 1, 1984.

Example 1. Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns $605 per month. We determine Mary's eligibility first. Since John's income is more than $157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire $605 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the $605 by the $20 general income exclusion, and then by the earned income exclusion of $65 plus one-half the remainder. This leaves John and Mary with $260 in countable income. The $260 countable income is less than the $472 Federal benefit rate for a couple, so Mary is eligible; therefore, there is no income to be deemed to Peter.

Example 2. Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns $1,065 a month. Since Dora's income is more than $157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire $1,065 as earned income available to Al and Dora as a couple. We reduce this income by the $20 general income exclusion and then by $65 plus one-half the remainder (earned income exclusion), leaving $490 in countable income. Al is ineligible because the couple's $490 countable income exceeds the $472 Federal benefit rate for a couple. Since Al is ineligible, we deem to Jeff $18, the amount of income over and above the amount which causes Al to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the $18 deemed to Jeff as unearned income, and we apply the $20 general income exclusion, reducing Jeff's countable income to zero. Jeff is eligible.

56. Section 416.1167 is revised to read as follows:

§ 416.1167 Temporary absences and deeming rules.

(a) *General.* A temporary absence, for the purpose of deeming, occurs when you or your ineligible spouse or parent or an ineligible child leaves the household but intends to, and does, return in the same month or the month immediately following. If the absence is temporary, we continue to consider the person a member of the household.

(b) *Child away at school.* If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider you temporarily absent from your parents' household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income (or resources) to you. Being subject to parental control affects deeming to you only if you are away at school.

57. In § 416.1168, paragraph (a) is amended by adding the word "are" after "you" in the second sentence, paragraph (b) is revised, and paragraph (c) is added to read as follows:

§ 416.1168 How we deem income to you from your essential person.

* * * * *

(b) *Determining your eligibility for an SSI benefit.* We apply the exclusions to which you are entitled under §§ 416.1112 and 416.1124 to your earned income and to your unearned income which includes any income deemed from your essential person. After combining the remaining amounts of countable income, we compare the total with the Federal benefit rate for a qualified individual (see § 416.413) to determine whether you are eligible for an SSI benefit.

(c) *Determining your SSI benefit amount.* We determine your SSI benefit amount in the same way that we determine your eligibility. However, in following the procedure in paragraphs (a) and (b) of this section we use your essential person's income that we deemed to you in the second month prior to the current month. *Exception:* Beginning with the month in which you no longer have your essential person, we do not use any of the income deemed to you from that essential person in a prior month to determine the amount of your benefit (see § 416.1160(a)(3)(ii)(C)). We use only your own countable income in a prior month.

58. Section 416.1169 is revised to read as follows:

§ 416.1169 When we stop deeming income from an essential person.

If including the income deemed to you from your essential person causes you to be ineligible for an SSI benefit, you are no longer considered to have that essential person whose income makes you ineligible. To determine your eligibility for that month we deduct only your own countable income from your Federal benefit rate. However, other deeming rules may then apply as follows:

(a) *Essential person is your spouse.* If the person who was your essential person is your ineligible spouse, we apply the deeming rules in § 416.1163 beginning with the month that the income of your essential person is no longer deemed to you.

(b) *Essential person is your parent.* If you are a child under age 18, and the person who was your essential person is your ineligible parent, we apply the deeming rules in § 416.1165 beginning with the month that the income of your essential person is no longer deemed to you.

§ 416.1182 [Amended]

59. In § 416.1182, the introductory paragraph is amended by removing the word "quarter" and adding the word "month" in lieu thereof.

Subpart L—Resources and Exclusions

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

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f), and 1631(d) of the Social Security Act, as amended; 49 Stat. 647 as amended, 86 Stat. 1465, 1466, 1468, 1470, 1473; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f), and 1383(d), unless otherwise noted.

§ 416.1232 [Amended]

61. In § 416.1232, the last sentence in paragraph (a) is amended by removing the word "quarter" and adding the word "month" in lieu thereof, and the last sentence of paragraph (b) is amended by removing the word "quarter" and adding the word "month" in lieu thereof.

Subpart T—State Supplementation Provisions; Agreement; Payments

62. The authority citation for Subpart T is revised to read as follows:

Authority: Secs. 1102, 1601, 1616, 1631, and 1634 of the Social Security Act as amended; sec. 401 of Pub. L. 92-603 as amended, sec. 212 of Pub. L. 93-66, sec. 8 of Pub. L. 93-223, secs. 1 and 2 of Pub. L. 93-335; 49 Stat. 647 as amended, 86 Stat. 1465, 1474, 1475, 1478, and 1485, 87 Stat. 155 and 956, 88 Stat. 291; 42 U.S.C. 1302, 1381, 1382e, 1383, 1383c, 1383e nts, 1382 nt (7 U.S.C. 2012 nts) Pub. L. 97-51, 97-85, 97-92, and 97-161.

§ 416.2020 [Amended]

63. In § 416.2020, paragraph (c) is amended by adding a period after the word "month" and removing the following words "i.e., $3 per quarter".

64. In § 416.2030, a new paragraph (c) is added to read as follows:

§ 416.2030 Optional supplementation: Variations in payments.

* * * * *

(c) *Effective month of State supplementary payment category.* The State supplementary payment category which applies in the current month will be used to determine the State payment level in that month. This rule applies even if the countable income in a prior month is used to determine the amount of State supplementary payment.

[FR Doc. 85-27698 Filed 11-25-85; 8:45 am]
BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 442

[Docket No. 85N-0466]

Antibiotic Drugs; Cefotaxime Sodium Injection

Correction

FR Doc. 85-25809 was corrected by a document appearing on page 48078 in the issue of Thursday, November 21, 1985. Make the following corrections to that document:

In the second and fourth lines from the bottom of the first column on page 48078, "§ 442.2136" should read "§ 442.213b".

BILLING CODE 1505-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Seeco, Inc., providing for the manufacture of 5-, 10-, and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: November 26, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Seeco, Inc., Box 1014, North Highway 71, Willmar, MN 56201, is the sponsor of a supplement to NADA 100-352 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in chickens, beef cattle, and swine. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.625 is amended by revising paragraph (b)(38) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(38) To 011749: 1 gram per pound, paragraph (f)(1)(vi)(*a*) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: November 19, 1985.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 85-28118 Filed 11-25-85; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Records and Reports; Local Union Report EEO-3; Waiver of Filing Reports for Calendar Year 1985

AGENCY: Equal Employment Opportunity Commission.

ACTION: Waiver of Rule Requirement.

SUMMARY: The Equal Employment Opportunity Commission waives the EEO-3 filing requirement for calendar year 1985. The Commission proposes to resume the EEO-3 on a biennial basis in 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Survey Division; Phone: (703) 756-6020.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission waives the requirement of § 1602.22 for filing the Local Union Report EEO-3 for the calendar year 1985. The recordkeeping requirements of § 1602.27 for calendar year 1985 remain unchanged and are not waived. The Commission reaffirms its filing requirements for these reports for calendar year 1986 and subsequent years.

Note.—Since the reporting requirement has been waived and no forms have been mailed to entities required to report, no further reporting action is required on 1985 reports.

Dated: November 20, 1985.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 85-28177 Filed 11-25-85; 8:45 am]

BILLING CODE 6570-06-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Retroactive Approval of Courses

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: State approving agencies sometimes approve courses for VA training retroactively. This amended regulation states how the VA will determine the commencing date of an award of educational assistance paid to veterans enrolled in a newly-approved course which has been approved retroactively.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 21624 and 21625 of the **Federal Register** of May 28, 1985 there was published a notice of intent to amend Part 21 in order to change the commencing date of an award of educational assistance paid to veterans

enrolled in a newly-approved course which has been approved retroactively.

Interested people were given 24 days to submit comments, suggestions or objections. The VA (Veterans Administration) received no comments, suggestions, or objections. Accordingly, the agency is making the amendment to § 21.4131 and the removal of § 21.4132 final.

The VA has determined that this regulatory amendment does not contain a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The regulatory amendment will not cause a major increase in costs or prices for anyone. Its annual effect on the economy will be less than $100 million. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that promulgation of this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA). Under 5 U.S.C. 605(b) this regulatory amendment, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this change will only affect payments made to individual benefit recipients. The regulatory amendment will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

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

Approved: November 4, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education is amended as follows:

1. Section 21.4131(a)(3) is revised to read as follows:

§ 21.4131 Commencing dates.

* * * * *

(a) Entrance or reentrance including change of program or school. (§ 21.4234).

* * * * *

(3) The later of the following:

(i) The effective date of the approval of the course, or

(ii) One year before the date the VA receives the approval notice.

(38 U.S.C. 1772(a))

* * * * *

§ 21.4132 [Reserved]

2. Section 21.4132 is removed and reserved.

[FR Doc. 85-28176 Filed 11-25-85; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Odd-Shaped Items in Bulk Third-Class Letter-Size Envelopes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes the mailability regulations to recommend that odd-shaped items, such as pens and bottle caps, mailed in bulk third-class letter-size envelopes be wrapped in the envelope's other contents. The Postal Service believes that it can machine process substantially more of this type of mail if odd-shaped items in the envelopes are well buffered by the various contents of the envelopes. While odd-shaped items are not permitted in letter-size envelopes mailed as First-, single piece third-, or fourth-class mail because they tend to jam high speed mail processing equipment and can injure postal employees when an envelope containing an odd-shaped item bursts, the Postal Service has not yet begun to use high-speed automated equipment to process large amounts of bulk third-class mail. Accordingly, the risks at present are considered relatively minimal if mailers follow the recommendation to carefully buffer odd-shaped items.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Gardner (202) 268-5178.

SUPPLEMENTARY INFORMATION: On August 16, 1985 the Postal Service published for comment in the **Federal Register** (50 FR 33068) proposed changes to the Domestic Mail Manual which would have extended the prohibition against the mailing of odd-shaped items in letter-size envelopes to include items mailed in letter-size envelopes at bulk third-class rates. Interested persons were invited to submit comments on the proposed changes by September 26, 1985.

We received 216 comments objecting to the proposal. Some commenters said that the proposal was unclear as to the kind of containers that would be acceptable for mailing odd-shaped items; others (twenty-six) requested that the proposal be amended to permit manual processing of mail that is properly identified as containing odd-shaped items, since, as they pointed out, there is no requirement that bulk third-class mail be machine-processible. Forty-three commenters objected to the proposal because they said it would hurt their companies. Two commenters did not object to the proposal. One commenter suggested a surcharge for odd-shaped items in letter-size envelopes instead of a prohibition.

In view of the almost unanimous objections to the proposal, postal safety, mail processing, and engineering personnel were requested to reassess the proposal to determine whether something less than a flat prohibition would be possible. Their reassessment was that, in view of the relatively minimal risks if odd-shaped items in letter-style envelopes are properly buffered, a prohibition would not be necessary at present. However, incidents of injury and damage will be continually monitored, particularly as the use of automated processing of this mail increases. If problems persist or become aggravated, then further corrective steps would have to be taken.

For the reasons given and after careful consideration, the Postal Service hereby adopts the following amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service, Incorporation by reference.

PART 111—[AMENDED]

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

Authority: 5 U.S.C 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621; 42 U.S.C. 1973cc-13, 1973cc-14.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. In 124.4, revise .47 to read as follows:

.4 Restricted Matter

* * * * *

.47 Odd-Shaped Items in Envelopes. Pens, bottle caps, and similar odd-shaped items are not acceptable in letter-size envelopes at the single piece First-, third-, or fourth-class rate because they could burst the envelope and damage mail processing equipment or injure employees (see 121.324 and 123.431). Odd-shaped items in letter size envelopes (5x3½x.007 inches minimum, 11½x6⅛x¼ inches maximum) mailed at the bulk third-class rate should be wrapped in the envelope's other contents, in order to streamline the shape of the envelope in the event of automated processing and to help assure that the contents and envelope are not damaged.

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the **Federal Register** as provided in 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-28147 Filed 11-25-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-4-FRL-2929-3; Docket No. DCO-IV-8504]

Atlanta Packaging Products, Inc.; Approval of a Delayed Compliance With State Implementation Plan Requirements; Order Issued by the Georgia Environmental Protection Division

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Georgia Environmental Protection Division (GEPD) to Atlanta Packaging Products, Inc. (Atlanta Packaging) located in Atlanta, Georgia. The Order requires Atlanta Packaging to bring air emissions from its four (4) flexographic printing presses and one (1) rotogravure printing press into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by December 1, 1986. Because of the Administrator's approval, Atlanta Packaging's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on November 26, 1985.

FOR FURTHER INFORMATION CONTACT: John Hund, Air Compliance Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone Number (404) 881-7654.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides & Toxics Management Division, Air Compliance Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On May 29, 1985, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, No. 103 at 50 FR 21869, a notice proposing approval of a Delayed Compliance Order issued by the GEPD to Atlanta Packaging. The notice asked for public comments by June 28, 1985, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. Therefore, the Delayed Compliance Order issued to Atlanta Packaging is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Atlanta Packaging on a schedule to bring its four (4) flexographic printing presses and one (1) rotogravure printing press into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by December 1, 1986. The Order also imposes interim emission requirements as follows.

> The Company will not emit into the atmosphere VOC at a rate in excess of 422 tons per calender year, unless the GEPD issues the Company a permit to allow an increase in emission. Thirty (30) days following each calendar quarter the Company will provide the GEPD a written report with sufficient documentation to show that during the calendar quarter VOC emissions to the atmosphere did not exceed the 422 ton per calendar year rate.

If the conditions of the Order are met, it will permit Atlanta Packaging to delay compliance with the SIP regulations covered by the Order until December 1, 1986. The facility is unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Atlanta Packaging on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Georgia State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: November 7, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

2. Section 65.150 is amended by adding the following in the table:

§ 65.150 Federal delayed compliance orders issued under section 113(d) (1), (3), (4) and (5) of the Act.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR promulgation	Final compliance date
Atlanta Packaging	Atlanta, GA	EPD-AQC-255	Chapter 391-3-1, rule .02(2)(mm).	May 29, 1985	Dec. 1, 1986.

[FR Doc. 85-28165 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-A-FRL-2929-3; Docket No. DCO-IV-8504]

General Motors Corp.; Approval of a Delayed Compliance With State Implementation Plan Requirements; Order Issued by the Georgia Environmental Protection Division

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Georgia Environmental Protection Division (GEPD) to General Motors Corporation (GM) located in Doraville, Georgia. The Order requires GM to bring air emissions from its surface coating of miscellaneous metal parts and products operation into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by October 1, 1985. Because of the Administrator's approval, GM's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on November 26, 1985.

FOR FURTHER INFORMATION CONTACT: John Hund, Air Compliance Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone Number (404) 881-7654.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides & Toxics Management Division, Air Compliance Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On May 29, 1985, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, No. 103 at 50 FR 21870, a notice proposing approval of a Delayed Compliance Order issued by the GEPD to GM. The notice asked for public comments by June 28, 1985, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the Delayed Compliance Order issued to GM is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places GM on a schedule to bring its ten (10) coating operations into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by October 31, 1985.

If the conditions of the Order are met, it will permit GM to delay compliance with the SIP regulations covered by the Order until October 31, 1985. The facility is unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place GM on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Georgia State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: November 7, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

2. Section 65.150 is amended by adding the following in the table:

§ 65.150 Federal delayed compliance orders issued under section 113(d) (1), (3), (4) and (5) of the Act.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR promulgation	Final compliance date
General Motors	Doraville, GA	EPD-AQC-256	Chapter 391-3-1, rule .02(2)(ii).	May 29, 1985	Oct. 31, 1985.

[FR Doc. 85-28167 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-4-FRL-2929-5; Docket No. DCO-IV-8504]

Mead Packaging Division of the Mead Corp.; Approval of a Delayed Compliance With State Implementation Plan Requirements; Order Issued by the Georgia Environmental Protection Division

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Georgia Environmental Protection Division (GEPD) to Mead Packaging Division of the Mead Corporation (Mead) located in Atlanta, Georgia. The Order requires Mead to bring air emissions from its two (2) rotogravure printing presses into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by March 1, 1985. Because of the Administrator's approval, Mead's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on November 26, 1985.

FOR FURTHER INFORMATION CONTACT: John Hund, Air Compliance Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone Number (404) 881-7654.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides & Toxics Management Division, Air Compliance Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On May 29, 1985, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, No. 103 at 50 FR 21873, a notice proposing approval of a Delayed Compliance Order issued by the GEPD to Mead. The notice asked for public comments by June 28, 1985, on EPA's proposed approval of the Order.

No public comments were received in response to the proposed notice. Therefore, the Delayed Compliance Order issued to Mead is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Mead on a schedule to bring its two (2) rotogravure printing presses into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by March 1, 1985.

If the conditions of the Order are met, it will permit Mead to delay compliance with the SIP regulations covered by the Order until March 1, 1985. The facility is unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Mead on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Georgia State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: November 7, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

2. Section 65.150 is amended by adding the following in the table:

§ 65.150 Federal delayed compliance orders issued under section 113(d) (1), (3), (4) and (5) of the Act.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR promulgation	Final compliance date
Mead Packaging	Atlanta, GA	EPD-AQC-258	Chapter 391-3-1, rule .02(2)(mm).	May 29, 1985	Mar. 1, 1985.

[FR Doc. 85-28166 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-4-FRL-2929-6]

Approval of a Delayed Compliance Order Issued by MSCHD to Jehl Cooperage Co., Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Memphis & Shelby County Health Department (MSCHD) to Jehl Cooperage Company, Incorporated. The Order requires Jehl Cooperage to bring air emissions from its two (2) spray booths and two (2) drying ovens at 4 East Virginia Avenue, Memphis, Tennessee, into compliance with Section 3-22, Memphis City Code air pollution control regulations contained in the federally approved Tennessee State Implementation Plan (SIP). Because of the Administrator's approval, Jehl Cooperage's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This rule takes effect on November 26, 1985.

FOR FURTHER INFORMATION CONTACT: E. Floyd Ledbetter, Chief, Northern Compliance Section, Air Compliance Branch, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881-4727.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides, and Toxics Management Division, Air Compliance Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On September 18, 1985, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, Vol. 50, No. 181 at page 37874, a notice proposing approval of a Delayed Compliance Order issued by the MSCHD to Jehl Cooperage. The notice asked for public comments by October 18, 1985, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. Therefore, the Delayed Compliance Order issued to Jehl Cooperage is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Jehl Cooperage on a schedule to bring its two (2) spray booths and two (2) drying ovens into compliance as expeditiously as practicable with Section 3-22, Memphis City Code, part of the federally approved Tennessee State Implementation Plan. The Order also imposes interim emission requirement as follows:

> . . . VOC emissions from the interior and exterior extreme performance coating operations and from the interior clear coating operations shall not exceed 5.23 and 4.75 pounds per gallon applied, excluding H_2O, respectively, from the effective date of the Order until December 31, 1985. After December 31, 1985, the respondent shall (1) reduce the VOC emissions from interior and exterior extreme performance coating operations and from the interior clear coating operations to a maximum of 3.5 and 4.3 pounds per gallon as applied, excluding water, respectively.

If the conditions of the Order are met, it will permit Jehl Cooperage to delay compliance with the SIP regulations covered by the Order until December 31, 1985. The facility is unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Jehl Cooperage on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Tennessee State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: November 7, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows.

Authority: 42 U.S.C. 7413(d), 7601.

2. By amending the table in § 65.471 by adding the following entry in alphabetical order to read as follows:

§ 65.471 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulations involved	Date of FR proposal	Final compliance date
Jehl Cooperage	Memphis	85-0154-01	MCC § 3-22 Ref. TAQA 1200-3-18-.21.	Sept. 18, 1985	Dec. 31, 1985.

* * * * *

[FR Doc. 85-28162 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-4-FRL; 2929-7; Docket No. DCO-IV-8504]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Approval of a Delayed Compliance Order Issued by the Georgia Environmental Protection Division to International Paper Co.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Georgia Environmental Protection Division (GEPD) to International Paper Company (IP) located in East Point, Georgia. The Order requires IP to bring air emissions from its five (5) flexographic printing presses into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by December 1, 1986. Because of the Administrator's approval, IP's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This rule takes effect on November 26, 1985.

FOR FURTHER INFORMATION CONTACT: John Hund, Air Compliance Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone Number (404) 881-7654.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides & Toxics Management Division, Air Compliance Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On May 29, 1985, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, Vol. 50, No. 103 at Page 21872, a notice proposing approval of a Delayed Compliance Order issued by the GEPD to IP. The notice asked for public comments by June 28, 1985, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. Therefore, the Delayed Compliance Order issued to IP is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places IP on a schedule to bring its five (5) flexographic printing presses into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by December 1, 1986.

If the conditions of the Order are met, it will permit IP to delay compliance with the SIP regulations covered by the Order until December 1, 1986. The facility is unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place IP on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Georgia State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: November 7, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

2. Section 65.150 is amended by adding the following in the table:

§ 65.150 Federal delayed compliance orders issued under section 113(d)(1), (3), (4) and (5) of the Act.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR promulgation	Final compliance date
International Paper Co.	Atlanta, GA	EPD-AQC-257	Chapter 391-3-1, rule .02(2)(mm).	May 29, 1985	Dec. 1, 1986.

[FR Doc. 85-28163 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-4-FRL-2929-8; Docket No. DCO-IV-8504]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Approval of a Delayed Compliance Order Issued by the Georgia Environmental Protection Division to Printpack, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Georgia Environmental Protection Division (GEPD) to Printpack, Inc. (Printpack) located in Atlanta, Georgia. The Order requires Printpack to bring air emissions from its ten (10) flexgraphic printing presses into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by December 1, 1986. Because of the Administrator's approval, Printpack's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This rule takes effect November 26,1985.

FOR FURTHER INFORMATION CONTACT: John Hund, Air Compliance Branch, U.S.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone Number (404) 881-7654.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air, Pesticides & Toxics Management Division, Air Compliance Branch, 345 Courtland Street, NE Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On May 29, 1985, the Regional Administrator of EPA's Region IV Office published in the **Federal Register**, Vol. 50, No. 103 at Page 21874, a notice proposing approval of a Delayed Compliance Order issued by the GEPD to Printpack. The notice asked for public comments by June 28, 1985, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. Therefore, the Delayed Compliance Order issued to Printpack is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clear Air Act, 42 U.S.C. 7413(d)(2). The Order places Printpack on a schedule to bring its ten (10) flexographic printing presses into compliance with air pollution control regulations contained in the federally approved Georgia State Implementation Plan (SIP) by December 1, 1986.

If the conditions of the order are met, it will permit Printpack to delay compliance with the SIP regulations covered by the Order until December 1, 1986. The facility is unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Printpack on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Georgia State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: November 7, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

2. Section 65.150 is amended by adding the following in the table:

§ 65.150 Federal delayed compliance orders issued under section 133(d)(1), (3), (4) and (5) of the Act.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR promulgation	Final compliance date
Printpack	Atlanta, GA	EPA-AQC-259	Chapter 391-3-1, rule .02(2)(mm).	May 29, 1985	Dec. 1, 1986.

[FR Doc. 85-28164 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Final rule; request for comments.

SUMMARY: On January 4, 1985, the Legal Services Corporation republished Part 1614 of its regulations for comment. (50 FR 509). Based upon comments received and recommendations of the Board's Operations and Regulations Committee, the Board of Directors, on October 11, 1985, approved an amended version of Part 1614. Included in this amended version was a definition of the term "private attorney" that had not been included in prior publications in the **Federal Register.** The Board decided that Part 1614 as amended should be published as a final rule and go into effect at the expiration of the notice period required by the Act and the Appropriations Act. The Board also decided to request comments on the new definition in preparation for possible reconsideration.

The revision makes eight major changes in Part 1614. A new definition of the term "private attorney" has been added to the end of § 1614.1. Completely new provisions dealing with joint ventures, waiver, and failure to comply have been added to Part 1614. The audit provisions and the provisions on revolving litigation funds have been substantially rewritten. Section 1614.3 has been revised to require recipients to include the direct delivery of legal services by private attorneys in their PAI programs. Numerous technical changes have also been made which do not affect the substance of the regulation.

DATES: *Effective date:* December 26, 1985. Comments must be received on or before December 26, 1985.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Thomas A. Bovard, Counsel to the Division of Policy Development, (202) 863-1842.

SUPPLEMENTARY INFORMATION: Part 1614 of the Corporation's regulations was adopted by the Corporation's Board of Directors on April 28, 1984 and published in final form in the **Federal Register** on May 21, 1984, 49 FR 21328. The Corporation's Board of Directors, at its December 20, 1984, meeting, decided to republish, for comment, certain regulations, including Part 1614. Part 1614 was republished in the **Federal Register** on January 4, 1985, 50 FR 509. Comments were received and reviewed, and changes were recommended in response to them. A revised draft was published in the **Federal Register** on June 18, 1985, 50 FR 25270, to inform interested parties of the progress the Corporation had made in revising the regulation. On August 2, 1985, the Corporation's Board of Directors, acting upon recommendations of its Operations and Regulations Committee, voted to continue requiring recipients to spend 12½% of their annualized basic field awards on PAI. It also voted to amend Part 1614 of the Regulations, and to publish the regulation, in revised form, for further comment. The revised regulation was published on August 26, 1985, 50 FR 34510. Fifty comments were received by the Corporation—35 within the 30-day period allowed and 15 thereafter. After considering these comments, the Board of Directors on October 11, 1985 approved an amended version of Part 1614. Included in this version was a definition of the term "private attorney," which had not been included in prior publications in the

Federal Register. The Board decided that Part 1614 as amended should be published as a final rule and go into effect at the expiration of the notice period required by the Act and the Appropriations Act. The Board also decided to request comments on the new definition in preparation for possible reconsideration.

Section 1614.1 Purpose.

The major issues before the Board with respect to Part 1614 were whether the 12½% standard should continue to be a requirement or should be considered simply a guideline and whether the standard should remain at 12½%. The Board received 83 comments on these issues and heard extensive public testimony on them. In addition it conducted an extensive study of the degree to which local programs have complied with the 12½% standard. At the May 23, 1985 meeting of the Operations and Regulations Committee, the Office of Field Services presented a preliminary, program-by-program study of the amount of money spent on PAI. To prepare this study, Corporation staff reviewed the 180 audit files of the programs whose fiscal years ended on December 31, 1984. These were the first programs that were required to report PAI expenditures separately on their audits. The Office of Field Services took a number of steps to doublecheck the preliminary figures presented at the May meeting. On May 17, before the meeting, the Corporation mailed a copy of the statistics to all LSC recipients and Regional Offices. On June 7, a draft copy of a revised and expanded PAI report, with a request for review and comment, was express mailed to all Regional Offices. Between June 1 and June 17, LSC staff in Washington, DC, contacted all nine regional offices and verified the statistics with them. The revised figures showed that 20.8% of the programs reviewed (37 out of 180) had fallen short of the 12½% level of compliance.

After considering the comments, the testimony at its meeting, and the statistics, the Board decided to continue employing the 12½% standard as a requirement. The Board believes that there have been very positive results from many of the PAI programs which have been implemented. PAI, when effectively used, expands the base of attorneys representing the poor, increases the range of choice for clients, and as demonstrated by the Delivery Systems Study, affords viable, cost effective service. In sparsely-populated areas, it is useful in extending outreach, and it is more cost effective than the occasional visits of a staff attorney. Widespread use of PAI promises to make available to eligible clients a greater diversity in services and a higher degree of specialization than would be available through a necessarily limited number of staff attorneys.

The Board wishes to encourage the further investigation and development of creative, new approaches to the delivery of services, and it wishes to share positive results nationwide. It believes that retention of a concrete standard, the 12½% requirement, is the best way to ensure the continued success of PAI and to secure increased participation on the part of recipients that have fallen short of the standard. Requiring the use of only 12½% of funds for the development of creative forms of delivery still leaves 87½% of funds available for use in the traditional staff attorney model. Accordingly, the Board has decided to retain the 12½% expenditure requirement.

Except for the deletion of the old waiver provision and for technical changes that make the mandatory nature of the 12½% standard clear, there has been only one other change in § 1614.1: In response to a discussion at the August meeting of the Board of Directors, a new paragraph (d) defining the term "private attorney" has been added at the end of § 1614.1. The Board was informed that there were situations in which programs had laid off staff attorneys and then contracted to pay these attorneys for doing the same work they had done before as staff. Such a procedure clearly fails to meet the one of the major purposes of the Corporation's PAI requirement, which is expand the number of private attorneys involved in the delivery of legal assistance to poor people.

Paragraph 1614.1(d) provides that the term "private attorney" as used in Part 1614 is an attorney who is not a staff attorney as defined in 45 CFR 1600.1, and further provides that, where the expenditure of funds with respect to a private attorney would violate the Ethics in Government Act (18 U.S.C. 207) if the recipients or grantees were federal agencies, such funds may not be counted as part of the PAI requirement. Section 1600.1 defines a staff attorney as an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

The Board has chosen to invoke the Ethics in Government Act in this context because one of the purposes of the Act is to keep people at federal agencies from transferring money to former colleagues of theirs who have retired into private practice. There is a reasonable fear that employees of a legal services program, when deciding what private attorneys to use, would naturally favor those with whom they had been most recently acquainted. The Board was informed that in several cases attorneys have left a recipient's staff and then been awarded contracts to do the same work they had been doing previously. There are at least two problems with arrangements of this type. First, one of the purposes of PAI is to bring people who have not been involved before into the delivery of legal services to the poor. Second, these sorts of arrangements create an appearance of impropriety. Accordingly, the Board decided that, although the Corporation is not a federal agency, the policies behind the Ethics in Government Act should apply in these cases since they involve the expenditure of taxpayer funds. The two year cooling off period of the Ethics in Government Act will be usefully employed in the context of PAI.

In referencing the Ethics in Government Act, the Corporation is adopting a provision with a detailed history behind it. Section 1614.1(d) provides that the Ethics in Government Act applies only for the limited purpose of determining whether funds given to a particular lawyer shall be counted toward a recipient's PAI requirement. The Board acknowledges that there are many circumstances in which the best thing to do is to give a client's case to someone who has been a staff attorney. Accordingly, § 1614.1(d) does not prohibit such a practice. It simply establishes that fees given a private attorney who has recently been a staff attorney cannot be credited toward the PAI requirement.

Section 1614.2 General policy.

The new paragraph (b) dealing with joint ventures added to § 1614.2 has been revised to include approval by the Office of Field Services in the main body of the paragraph rather than in subparagraph (1). The remaining subparagraphs have been renumbered as factors for OFS to consider. Paragraph (b) still makes clear that recipients whose case service areas are adjacent, coterminous, or overlapping may enter into joint venture agreements. Approval by OFS is subject to three conditions: The venture must meet certain expenditure requirements unless a waiver is obtained under § 1614.6; each participant must be a bona fide participant; and the venture must

provide opportunity for involving private attorneys throughout the entire joint service area. There was concern among the members of the Board that OFS should not be able to waive the requirements that such recipient participate in good faith and that a joint venture involve private attorneys throughout the joint service area. At the same time it was felt that there should be flexibility in cases in which one of the recipients in a joint venture fell short of the 12.5% requirement. The final language reflects both of these concerns.

The expenditure requirements of § 1614.2(b)(1) vary according to the nature of the joint venture. Where recipients whose case service areas are coterminous or overlapping enter into a joint venture, the recipients must plan to spend at least 12½% of the aggregate of their basic field award on PAI. Where a joint venture involves recipients whose service areas are adjacent but not coterminous or overlapping *each* recipient must spend 12½% of its basic field grant on PAI, although this requirement is subject to waiver under § 1614.6.

Section 1614.3 Range of activities.

The Board believes that the essence of PAI is the direct delivery of legal services to the poor by private attorneys and that all recipients ought to incorporate direct delivery into their PAI programs. Section 1614.3, accordingly, has been amended to make clear that the direct delivery of legal assistance is a mandatory part of PAI programs. The Board has declined to state what percentage of a PAI program ought to involve direct delivery. Local programs may make that determination. Under new paragraph (a) recipients must include the direct delivery of legal assistance by private attorneys in their PAI programs. Under new paragraph (b), at the option of recipients, PAI programs may also include support activities and other forms of indirect delivery of service. It should be noted, however, that it is not the Board's intent under § 1614.3 to permit recipients to meet their 12½% spending requirement by providing private attorneys with services from national and state support centers.

Comments on § 1614.3 showed little opposition to requiring local programs to provide direct delivery of legal services as part of the PAI programs. Some of those who wrote the Corporation saw, however, in this section a possible inference that, to satisfy the direct delivery requirement, recipients, rather than run PAI programs in-house, must fund or contract with outside entities through grants, subgrants, or contracts. The Board wishes to make clear that this section does not require that direct delivery be done through outside entities. It is perfectly permissible for a program to administer an organized *pro bono* plan in-house, as long as outside lawyers actually do the substantive work.

The Corporation received numerous complaints about the burdensome paperwork requirements formerly contained in § 1614.3(d), the auditing provision. Upon study, the Board reached the conclusion that these paperwork and record-keeping requirements went beyond what was necessary. At the same time it recognized that any time the Corporation issues a regulation requiring an expenditure of funds for a certain purpose, it will be necessary to impose a certain number of accounting and bookkeeping requirements. The Board has entirely rewritten the auditing provision which now appears as § 1614.3(e) and has sought to impose only those record-keeping requirements needed to track the progress of recipients in implementing PAI.

Perhaps the most significant change in the auditing provision relates to documenting the time staff attorneys and other recipient employees spend on PAI. Old § 1614.3(d)(6) required that if a recipient allocated the time of staff attorneys or paralegals to PAI, it had to submit detailed timesheets accounting for *all* the time of those employees, not just the time spent on PAI activities. By contrast new § 1614.3(e)(1)(i) requires timesheets from attorneys and paralegals only for the time spent on PAI activities. It retains the provision excluding such employees as receptionists, secretaries, intake personnel or bookkeepers from the requirement of keeping time sheets, but with slightly different wording. The Board found the wording of the old provision to be ambiguous: it might mean either that a recipient could not allocate the time of these staff to PAI or that the recipient simply did not have to keep time records for these personnel. The amended language makes clear that the second meaning is the one intended, and that, although recipients do not have to keep time sheets for these personnel, they do not have to have some reasonable way of allocating their time between PAI and their regular staff duties.

The Board has also deleted from the auditing section the provision (formerly § 1614.3(d)(10)) requiring programs that use judicare or another compensated bar mechanism to establish an encumbrance system. New § 1614.3(e)(1)(i), however, retains the requirement that encumbrances not be included in calculating whether a recipient has met its PAI requirement.

Some comments showed uncertainty as to whether the prior approval requirement of the subgrants regulation (45 CFR Part 1627) would continue to apply under § 1614.3(e)(1)(iii). The Board wishes to make clear that there is no intent to waive the prior approval requirement or any other of the provisions of section 1627.

Finally, the auditing provision now requires that in the year-end audit, recipients report PAI expenditures as a separate fund or on a separate schedule. (§ 1614.3(e)(2)). The approach of old § 1614.3(d)(3) which made establishing a separate fund or schedule optional raised considerable problems for the Corporation in collecting data on PAI. In their year-end audits, some programs explained their PAI activities and expenses in a footnote. Others programs, however, reported only a one-line item expense for PAI, making it impossible for the Corporation to determine how they had spent their PAI money. Still others gave no data about PAI in their audits at all, despite Corporation requirements. The Board has determined that, for the Corporation to track the progress of PAI, there must be more uniformity in the way programs report PAI. The new provision, accordingly, requires that programs highlight PAI expenditures in a separate column in their financial statements. It does not require that programs establish separate bank accounts or separate books to account for PAI expenditures. The words "a separate fund" are a technical phrase used by auditors and are intended to be synonymous with "a separate schedule", words that are perhaps clearer to non-auditors.

Section 1614.4 Procedure.

A new clause has been added to § 1614.4(b) requiring recipients to document that each year their proposed annual PAI plan has been presented to all local bar associations within their service area and to summarize the responses of these bar associations. A number of those who wrote the Corporation about this new provision apparently believed that it required recipients to submit a *new* plan each year with the refunding application. Section 1614.4(b), however, simply requires recipients to submit their PAI plans, whatever they may be, along with the their refunding applications; there is no intent to require programs to have a new plan each year, and programs may submit previously used plans. Some

comments suggested that it was cumbersome to submit plans to bar associations. The Board recognizes that, in cases where there may be many bar associations, there may be some logistical problems in submitting a program's plan to every bar association. In order to encourage widespread participation in and familiarity with PAI, however, it is the intent of the Board that the annual PAI plan be sent not only to the major bar associations with which a recipient works but also to all bar associations within its case service area. The requirements of this paragraph may be satisfied quite easily by affording proof that letters were sent to each of the relevant bar associations and by giving summaries of the answers in the refunding applications. Recipients need incur copying and postage expenses only once a year. This paragraph does not require them to meet with all bar associations concerned. It is not necessary for a recipient to send additional communications to bar associations if it alters its plan in the middle of a year. A recipient need not produce return receipts; carbon copies or photocopies of the letters sent will suffice.

Section 1614.5 Prohibition of revolving litigation funds.

Section 1614.5, prohibiting certain kinds of revolving litigation funds, has been entirely rewritten to make clear the Board's intent to prohibit the systematic encouragement of fee-generating cases. The Board agreed with the comments of those who found the previous version of § 1614.5 confusing. As a member of the comments pointed out, Part 1609 of the Corporation's regulations already prohibits anything that encourages fee-generating cases, including the types of revolving litigation funds that the Corporation finds objectionable. The Board decided, accordingly, to make specific reference to Part 1609 in order to make clear that the evil addressed by § 1614.5 is systematic violations of Part 1609.

New paragraph (a) of § 1614.5 defines a revolving litigation fund system as a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of the regulations by advancing funds to private attorneys to enable them to pay costs, expenses, or attorneys fees for representing clients. Paragraph (b) makes it clear that recipients may not use LSC funds to establish or maintain such systems. Paragraph (c) permits systems that advance costs and expenses as long as two conditions are met in each case: the private attorney involved is representing an eligible client in a matter in which representation of the eligible client would be allowed under the LSC Act and LSC regulations; and the private attorney either spends funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, requests the recipient to advance the funds. In response to comments, a new subparagraph (d) has been added to make clear that this section does not prohibit programs from recovering, from an award to a private attorney, any amounts advanced to the attorney for costs, expenses, or fees. The Board agreed that without this paragraph the language of § 1614.5 was too broad and could have been read as applying to judicare programs.

The Board intends that funds recovered by programs pursuant to § 1614.5 should go into the recipient's PAI account or into its general account. The new draft Audit and Accounting Guide provides that program income should go into the account that generated that income and should be subject to the same restrictions as any other money going into that account. Accordingly, the Board determined that it was not necessary to address the issue specifically in § 1614.5.

Section 1614.6 Waivers.

The Board determined that the old waiver provision contained in the last sentence of § 1614.1(a) was overly narrow. Replacing this provision, in accordance with the Board's concern for flexibility as well as accountability, is a completely new section on waiver, § 1614.6. It is the hope of the Board that this provision will address all the possible situations in which imposition of the 12½% requirement would cause hardship or would hinder the goal of the economical and effective use of Corporation funds.

Section 1614.6 provides for three kinds of waivers, a complete or full waiver of the expenditure requirement for a fiscal year, a partial waiver of the expenditure requirement, and a waiver of the special accounting and bookkeeping requirements. The two circumstances under which OFS will grant a complete or full waiver of the spending requirement are set forth in § 1614.6(b): where there simply are not enough qualified private attorneys to conduct a PAI program, or where all qualified private attorneys either refuse to take part in the program or have conflicts that render their participation inappropriate.

Section 1614.6(c) sets forth the six circumstances under which OFS will grant a partial waiver. First, OFS may grant such a waiver where the pool of available and qualified private attorneys is simply too small to use all the PAI funds economically and effectively. Second, OFS may grant a partial waiver where, despite the recipient's best efforts, there simply are not enough qualified private attorneys willing to take part in the program. The third instance in which OFS may grant a partial waiver is where a recipient, despite its best efforts, finds itself unable to spend the full PAI allocation during a program year. In studying how recipients have complied with the PAI requirement, the Board was distressed to discover that, although a significant number of programs had not come near the 12½% standard, only about four programs had contacted or attempted to communicate with the Corporation about their problems with PAI. The Board believes that communicating with the Corporation about such problems is an affirmative duty that recipients incur when they accept a grant from the Corporation. Accordingly, in defining what constitutes a recipient's "best efforts" for the purposes of § 1614.3(c)(3), the Board included the requirement that the recipient communicate to OFS its problems spending its PAI allocation and that it request and avail itself of assistance or advice from OFS. Unless unusual circumstances caused the shortfall, a recipient is required under this subsection to accompany a waiver with a plan to avoid a shortfall in the future.

Programs sending out PAI cases to private attorneys at an even rate sometimes have little control over when the attorneys will perform work or when they will bill for their work. The third and fourth types of partial waivers address the problems that might arise because of the time a recipient is billed. Section 1614.6(c)(4) permits a waiver where, simply because attorneys have failed to bill a recipient during one fiscal year, the recipient's PAI expenditure for that year falls below 12½%. A clarifying amendment was made to this section by adding after the word "encumbrances", the first time it appears, the phrase "when added to projected expenditures". The word "encumbrances", which means commitments in the forms of orders, contracts and similar items that will become payable when goods are delivered or services rendered, is not to be understood to include encumbrances from a previous grant year.

The fifth kind of partial waiver, as detailed in § 1614.6(c)(5), will be granted where, simply because attorneys chose to bill a recipient during one fiscal year,

it is appropriate to permit PAI expenditures for the following fiscal year to fall below 12½%.

OFS may grant a sixth kind of partial waiver where a recipient can show that, in the reasonable judgment of its governing body, it would not be economical and efficient for it to expend its full 12½% allocation on PAI as long as the recipient has handled and expects to continue to handle at least 12½% of cases brought on behalf of eligible clients through PAI. For the sake of clarity, the two partial waivers contained in prior drafts of § 1614.6(c)(6) have now been condensed into one. The original language of this section granted waivers in cases where recipients received substantial contributions from the private bar and thus handled a substantial number of cases or where recipients used resources efficiently and thus handled a substantial number of cases. The addition of the 12½% caseload requirement to each of these provisions effectively condensed these provisions into one waiver and the new language reflects this reality. One technical amendment was made to this waiver as well. The word "its" before the word "cases" was stricken and the phrase "brought on behalf of eligible clients" was inserted after the word "cases." The reason for this change was that cases that are handled by private attorneys are not necessarily the recipient's cases, although they are cases brought on behalf of eligible clients.

The maximum amount of flexibility the Board was prepared to endorse was that contained in the sixth waiver, since other proposals did not contain a concrete standard and left too much discretion in the hands of OFS. Other partial waivers admittedly require OFS to exercise discretion. The first partial waiver requires OFS to determine whether the population of qualified lawyers is too small, and the second requires it to determine whether too few qualified lawyers are willing to participate. The words "too small" in the first waiver, however, mean "too small to get the work done" and the word "willing" in the second waiver meant "willing to do the work." With both of these waivers, OFS will use its fact finding discretion only to determine whether private resources were available to meet a concrete target, the 12½% standard.

Other proposals, by contrast, removed the 12½% target itself and left to OFS discretion what the target ought to be. The Board, accordingly, found none of the suggestions for new waivers persuasive. One proposal was that a waiver should be granted where the local board establishes that PAI is not the most economical and efficient means of delivery. For many years, however, the local and national boards almost uniformly opposed PAI. It was because of this opposition that the Board and its predecessors had found it necessary to establish a national PAI effort. Another waiver proposal was that the regulation allow a program to average its PAI expenditures over a two or three year period. Such averaging, however, is already built into § 1614.7. Under that section, even if a program that applies for a waiver fails to receive one, the worst that happens is that it is required to make up its shortfall the next year, which is essentially a form of two-year averaging. A third waiver proposal was that the 12½% requirement should be waived if the local bar associations and the local program agree on a PAI program. The Board would have supported such an approach, as long as it really provided for substantial involvement of the private bar. The problem with most versions of the proposal, however, was that they failed to contain a concrete measure of what is substantial involvement. Accordingly, the Board believed it best to require that recipients using such alternative programs handle 12½% of cases brought on behalf of eligible clients through PAI. That standard provides a concrete measurement of what substantial involvement is.

It was suggested that there might be situations in which a program and a bar association had worked out an excellent PAI program but had failed both to meet the 12½% expenditure requirement and the 12½% caseload requirement. One example given was that a program might wish to contract for lawyers with special expertise to handle a few important cases and areas. The purpose of PAI, however, is to involve the greatest number of the bar in all kinds of cases, not specialized ones.

Section 1614.6(d) permits the Audit Division with the concurrence of OFS to grant waivers of the special accounting and bookkeeping requirements. Except with respect to subgrants, it is expected that such waivers will be rarely granted. As discussed above, the auditing requirements have been rewritten to require only the minimum record-keeping necessary for the Corporation to monitor PAI. In most instances, therefore, granting a waiver of these requirements would make it impossible for the Corporation to track a recipient's compliance with the PAI requirement.

Recipients, as set forth in § 1614.6(e)(1), may apply for a waiver for the current or for the next fiscal year. All applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year. At the expiration of a waiver, a recipient may seek a similar or identical waiver.

In drafting the new waiver provision, the Board has required that the Corporation respond in writing to requests for waivers within thirty days (§ 1614.6(f)). If the Corporation fails to meet this thirty day deadline, the recipient will automatically receive a waiver. The Board determined that it is necessary for the Corporation to rule speedily on waiver requests so that recipients denied waivers late in the year will still have time to comply with the spending requirement.

Section 1614.7 Failure to comply.

In addition to the new waiver provision, an enforcement provision has been added to Part 1614. This new provision, § 1614.7, details the penalties assessed against recipients who fail to meet the 12½% spending requirement and who fail to take advantage of the liberal waiver provision. Under paragraphs (a) and (c) of § 1614.7, if a recipient falls short of the 12½% spending requirement and also fails without good cause to seek a waiver, it loses the unspent money to qualified PAI programs in its service area. In any case where a recipient applies for a waiver, however, or, in cases where it fails with good cause to seek a waiver, the recipient does not lose its money; it must simply spend the required amount of money during its next fiscal year. To avoid losing its money under the penalty provision in § 1614.7(c), all a recipient need do is apply for a waiver. It does not actually have to receive a waiver. A new paragraph (d) was added to § 1614.7 and provides that the withholding of funds under this section shall not be construed as a termination of financial assistance under Part 1606 of the regulations or a denial of refunding under Part 1625 of the regulations.

Under § 1614.7(a), the Board intends for staff to answer only the concrete question of whether a program has good cause for failing to seek a waiver. Staff does not have the authority to determine whether programs had good cause for failing to meet the PAI requirement. If a program fails to seek a waiver, but has good reason for its failure, then paragraph (b) would apply.

A number of letters suggested that § 1614.7 places too much discretion in the hands of Corporation staff. The

Board, however, intends for this section to minimize staff discretion. The only determination left to staff under § 1614.7 is whether or not a recipient has failed, without good cause, to seek a waiver during the term of the grant. If a program asks for a waiver, but fails to receive one, it is automatically required to make up the short-fall the next year. The classic case of good cause for failure to seek a waiver is the case where a program has come close to spending 12½% on PAI but has failed to discover that it had missed the 12½% requirement until it received its yearly audit. The Board decided, however, not to address this situation specifically in the regulation. In the interest of flexibility, it decided to opt for the more general language of "good cause" because it did not want to exclude other good reasons for failing to seek waivers.

Some comments complained that, under the waiver and failure to comply provisions in §§ 1614.6 and 1614.7, programs that did not know how close they were to meeting the 12½% requirement would have to file waiver requests every year out of self defense. This Board like previous Boards believes that PAI is a good thing, that substantial PAI is even better, and that 12½% is a minimum requirement. If a program tries to hit the minimum target on the dot and does not leave itself much leeway, it might have to file for a precautionary waiver every year. If, however, it agrees with the Board that PAI is a good thing and that substantial PAI an ever better thing, the program will come closer to 15% or 20% and will not have to worry about waivers. The ABA's Standing Committee on Legal Aid and Indigent Defendants expressed concern that subparagraph (c)(3), with its reference to contacting OFS, might discourage programs from contacting the ABA's PBI (Private Bar Involvement) project and from using its expertise. The regulation, however, requires consultation with OFS but does not prohibit consultation with other groups. Recipients should contact anyone who might be of use to them in developing effective PAI programs.

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys.

For the reasons set out above 45 CFR Part 1614 is revised to read as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.
1614.1 Purpose.
1614.2 General policy.
1614.3 Range of activities.
1614.4 Procedure.
1614.5 Prohibition of revolving litigation funds.
1614.6 Waivers.
1614.7 Failure to comply.

Authority: Sec. 1007(a)(2)(C) and sec. 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

§ 1614.1 Purpose.

(a) This part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys in the delivery of legal assistance to eligible clients. Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services; this requirement is hereinafter sometimes referred to as the "PAI requirement". Funds received from the Corporation as one-time special grants shall not be considered in determining a recipient's PAI requirement.

(b) Recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

(d) As of January 1, 1986, the term "private attorney" as used in this Part means an attorney who is not a staff attorney as defined in § 1600.1 of these regulations. In circumstances where the expenditure of funds with respect to a private attorney would violate the provisions of the Ethics in Government Act (18 U.S.C. 207) if the recipients or grantees were federal agencies, such funds may not be counted as part of the PAI requirement.

§ 1614.2 General policy.

(a) This part implements the policy adopted by the Board of Directors of the Corporation which requires that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economic and efficient manner.

(b) In the case of recipients whose service areas are adjacent, coterminous or overlapping, the recipients may enter into joint efforts to involve the private attorneys in the delivery of legal services to eligible clients, subject to the prior approval of the Office of Field Services. In order to be approved the joint venture plan must meet the following conditions:

(1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12½%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12½% of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under § 1614.6;

(2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(3) The joint PAI venture must provide an opportunity for involving private attorneys throughout the entire joint service area(s).

(c) Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients through programs such as organized *pro bono* plans, reduced fee plans, judicare panels, private attorney contracts, or those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through "revolving litigation fund" systems, as described in § 1614.5 of this part, shall neither be used nor funded under this part nor funded with any LSC support;

(b) Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

(1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and

(2) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(c) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economic delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy.

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

(d) Systems designed to provide direct services to eligible clients by private attorneys on either a *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(4) Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers, that provide back-up on substantive and procedural issues of the law.

(e) The recipient shall demonstrate compliance with this Part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit and Accounting Guide for Recipients and Auditors and shall have the following characteristics:

(1) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(ii) Payments to private attorneys for support or direct client services rendered. The recipient shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(iii) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit and Accounting Guide for Recipients and Auditors and 45 CFR Part 1627;

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(2) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(3) In private attorney models, attorneys may be reimbursed for actual costs and expenses. Attorney's fees paid may not exceed 50% of the local prevailing market rate for that type of service.

(4) All records pertaining to a recipient's PAI requirements which do not contain client confidences or secrets as defined by applicable state law shall be made available for inspection and review by LSC auditors and monitors during regular business hours.

§ 1614.4 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

§ 1614.5 Prohibition of revolving litigation funds.

(a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of these regulations by advancing funds to private attorneys to enable them to pay costs, expenses,

or attorneys fees for representing clients.

(b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys for costs and expenses, provided:

(1) The private attorney is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's Regulations; and

(2) The private attorney has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

(d) Nothing in this section shall prevent a recipient from recovering from a private attorney the amount advanced for any costs, expenses, or fees from an award to the attorney for representing an eligible client.

§ 1614.6 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by the Office of Field Services (OFS) when the recipient shows to the satisfaction of OFS that:

(1) Because of the unavailability of qualified private attorneys, an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by OFS when the recipient shows to the satisfaction of OFS that:

(1) The population of qualified private attorneys available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts,—including, but not limited to , communicating its problems expending the required amount to OFS and requesting and availing itself of assistance and/or advice from OFS regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose current encumbrances and projected expenditures for the current fiscal year would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12½%) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12½%) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12½% of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least 12½% of cases brought on behalf of eligible clients through its PAI program(s).

(d) (1) A waiver of special accounting and bookkeeping requirements of this part may be granted by the Audit Division with the concurrence of OFS, if the recipient shows to the satisfaction of the Audit Division of OFS that such waiver will advance the purpose of this part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by the Audit Division with the concurrence of OFS; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the current, or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All Waiver requests shall be addressed to the Office of Field Services (OFS) or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

§ 1614.7 Failure to comply.

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12½%) of the recipient's basic field award.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service area through PAI programs. Disbursement of these funds shall be made through a

competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

(d) The withholding of funds under this section shall not be construed as a termination of financial assistance under Part 1606 of these regulations or a denial of refunding under Part 1625 of these regulations.

Dated: November 20, 1985.

John H. Bayly, Jr.,

General Counsel.

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BILLING CODE 6820-35-M

45 CFR Part 1620

Priorities in Allocation of Resources

AGENCY: Legal Services Corporation.

ACTION: Final rule; amendment.

SUMMARY: On July 2, 1985, the Legal Services Corporation published proposed amendments to Part 1620 of its regulations for public comment. No comments were received. On September 6, 1985, the Board unanimously adopted the amendments to Part 1620 as published. Sixteen amendments are adopted. Of these amendments eight make major, substantive changes. One of these major amendments is a complete revision of the access provision. It clarifies that recipients, while attempting to ensure that all eligible clients have reasonably equal access to legal services, may consider special legal requirements and that they need not establish quota systems or follow arbitrary standards in determining how to allocate their resources. The seven other major amendments provide that, in setting priorities, the governing bodies of recipients should contact eligible clients; that the governing bodies should consider the relative importance of the particular legal problems of the *individual* clients of the recipient; that the governing bodies should consider whether legal efforts will result in efficient and economic delivery of legal services; that the requirement of an initial written report is eliminated; that priorities shall be set periodically; that annual reports summarizing the review of priorities shall be made available to the public; and that recipients should include in their annual report a copy of the case acceptance policies and proceedings established under § 1620.4. The other eight amendments are of a technical nature.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Bovard, Counsel, Division of Policy Development, (202) 863-1820.

SUPPLEMENTARY INFORMATION: On July 2, 1985, the Legal Services Corporation published proposed amendments to Part 1620 of its regulations for public comment (50 FR 27326). No comments were submitted. On September 6, 1985, the Corporation's Board of Directors, acting upon recommendations of its Operations and Regulations Committee, adopted the amendments to that Part as published. The specific proposed amendments are discussed on a section-by-section basis below.

Section 1620.1 Purpose.

The letter "s" has been added to the word "view" in recognition that eligible clients, staff, the private bar and other interested persons may not have identical opinions about the policies and plans of a recipient. Recipients should consider the opinions of all of these groups. The last half of the section, beginning with the words "it is further" has been deleted. The Board viewed this language as simply a confusing and unnecessary attempt to summarize the rest of the regulation.

Section 1620.2 Procedure.

The first sentence of § 1620.2(a)(1) has been split in half by inserting a period (.) after the word "population", removing the words ", as well as" and inserting in their place the words "The appraisal shall also include". The words "to the extent feasible should include outreach to eligible clients which may include the use of such techniques as questionnaires and surveys." have been inserted after the words "interested persons". This change reflects the conviction of the Board that communicating with the client community is of vital importance in aiding recipients to establish priorities. To the extent feasible and cost-effective, programs should include outreach to eligible clients who might not otherwise be contacted, such as clients in nursing homes or other institutions, or who reside in locations that are isolated, difficult to reach or otherwise inaccessible. Programs may use a variety of techniques to conduct feasible outreach including, where practical, questionnaires and surveys.

In § 1620.2(a)(2), the words "in the development of the report required by § 1620.4(b)" have been removed. This change recognizes that former § 1620.4(b) has been deleted.

In paragraph 1620.2(b)(6) the word "individual" has been inserted in front of the word "clients" to encourage recipients to look at their clients not simply as a class subject to the uniform application of standard remedies but as people with diverse legal problems each of which is worthy of careful and particular attention.

The word "and" at the end of paragraph (b)(7) of § 1620.2 has been removed and the punctuation mark and word "; and" have been added to the end of paragraph (b)(8) of § 1620.2 to accommodate the addition of a new paragraph (b)(9).

Finally, a new paragraph 1620.2(b)(9) has been added which is similar in language to section 1007(a)(3) of the Legal Services Corporation Act. The new paragraph would require recipients, in establishing their priorities, to consider whether "legal efforts will result in efficient and economic delivery of legal services." Programs should adopt priorities that enhance the efficient and economic delivery of legal services.

Section 1620.3 Access.

This section has been substantially revised to emphasize that recipients may take a flexible approach in dealing with the issue of client access to legal services. It must, however, be read in the context of the entire regulation. Programs may set priorities that favor certain types of services or cases, but they must make a reasonable effort to provide similar types of services to all clients who are in essentially similar legal and factual circumstances. In the first sentence the words "and shall make a reasonable effort to" have replaced the words "so as to substantially". This change recognizes that a recipient's goal is the economic and effective delivery of legal services, not the elimination of every possible disparity in client access. In promoting that goal, recipients may sometimes reasonably choose an option that does not produce substantially equal access. The words "similar types" have replaced the words "the same type" because legal needs may differ from place to place within a recipient's service area. In some cases a recipient may be providing more effective service to all of its clients if it offers different types of services in different areas. The words "and level of representation to the maximum extent economically practical" have been removed because they were vague and misleading. When an attorney undertakes to represent a client, he or she gives that client the representation that best meets the client's needs.

At the beginning of the second sentence a new phrase, "If the governing body of the recipient so desires", has been added to emphasize that recipients

have the option to be flexible. The word "the" has been added and the capital "T" in the word "Types" changed to a lower case "t" to conform to accepted standards of English usage and punctuation. The words "so as to take into account" replace the words "as required to meet", and the words "a higher incidents of particular kind of legal problem, the considerably higher costs of providing services, or," replaces the words "and level of representation may vary based on". This change as well reflects the Board's concern for recipient flexibility and its concern that recipients focus on the acutal legal needs of clients and the most effective and economic way of delivering services to them. Some areas may have ususual legal needs that do not exist elsewhere. Accordingly, the governing body may provide different types of services to take into account different priorities in different parts of the recipient's service area (*e.g.* rural issues or special legal problems of particular client groups such as black lung cases among miners); a higher incidence of a particular kind of legal problem (*e.g.*, in more urban areas or in institutional settings); the considerably higher costs of providing services (*e.g.*, in remote or isolated areas); or differences in individual client financial resources. Under the regulation, recipients will be free to weigh the type and incidence of legal problems in their service areas against the relative costs of providing particular services in different geographical areas. As in § 1620.2(b)(6), the word "individual" is inserted before the word "client" to emphasize that, in establishing priorities, recipients should focus on people and not classes.

The last two sentences of § 1620.3 are removed and replaced with a new sentence: "Consistent with the methods of delivery that are most effective and economical and the factors of § 1620.2(b), allocation of resources shall be reasonably proportional to the distribution of eligible clients within the recipient's service area, but this part shall not be interpreted to require any rigid standard for dollar expenditures or number of clients served". This new sentence clarifies the Board's decision that recipients be held to a reasonableness standard in resolving the issue of client access. Recipients do not have to set up quotas or use other arbitrary devices in determining how to apply their resources. The priorities regulation should not be read to require offices in every country, equal staff, or any rigid standard for dollar expenditures or number of clients served. It is the availability of services, not the physical location of resources, which is pivotal.

Section 1620.4 Implementation.

Paragraph (b) of § 1620.4 is removed because the date June 30, 1984 has already passed and because, in the light of the requirement in § 1620.5 that there be an annual written report, the Board determined that it was unnecessary to require an initial written report. Because paragraph (b) has been eliminated and only one paragraph remains in the section, the characters "(a)" are removed from the beginning of § 1620.4.

Section 1620.5 Annual Review.

The words "be set periodically and shall" are inserted before the words "be reviewed" to indicate that, although recipients are not required to set priorities each year, they are required to do so periodically. The words "After the initial report described in § 1620.4(b)" are removed because an initial report is no longer required. The lower case "e" in the word "each" is changed to a capital "E" since "Each" now constitutes the first word of the second sentence. The words "and make available to the public" are inserted before the words "an annual report" to encourage accountability to the public. The word "and" before the word "mechanisms" is deleted as unnecessary. The words "policies and procedures established under § 1620.4 of these regulations as a result of the priority review and assessment" are substituted for the words "schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review". The Board deleted the term "case acceptance schedule" because it was unclear. It determined that the Corporation's need to have information about the procedures recipients use in accepting cases should be met by requiring recipients to include in their annual reports copies of the case acceptance policies and procedures established under § 1620.4 of the regulation.

List of Subjects in 45 CFR Part 1620

Legal Services.

PART 1620—[AMENDED]

For the reasons set out in the preamble, Part 1620 of Title 45, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 1620 reads as follows:

Authority: Sec. 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996f(a)(2)).

§ 1620.1 [Amended]

2. Section 1620.1 is amended by adding the letter "s" to the word "view".

3. Section 1620.1 is further amended by inserting a period (.) after the words "other provisions of Federal law" and removing the semicolon (;) and all that follows it.

§ 1620.2 [Amended]

4. Paragraph (a)(1) of § 1620.2 is amended by removing the words ", as well as" and inserting in their place a period (.) followed by the words "The appraisal shall also include".

5. Paragraph (a)(1) is further amended by removing the period following the word "persons" and inserting in its place the words ", and to the extent feasible should include outreach to eligible clients which may include the use of such techniques as questionnaires and surveys.".

6. Paragraph (a)(2) of § 1620.2 is amended by removing the words "in the development of the report required by § 1620.4(b)," after the words "setting of priorities,".

7. Paragraph (b)(6) of § 1620.2 is amended by inserting the word "individual" before the word "clients".

8. Paragraph (b)(7) of § 1620.2 is amended by removing the word "and" at the end of the paragraph.

9. Paragraph (b)(8) of § 1620.2 is amended by removing the period (.) and inserting in its place the punctuation mark and word "; and".

10. Paragraph (b) of § 1620.2 is amended by adding at the end the following new paragraph:

"(9) Whether legal efforts will result in efficient and economic delivery of legal services."

11. Section 1620.3 is revised to read as follows:

§ 1620.3 Access.

A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, and shall make a reasonable effort to provide that all potentially eligible clients in the recipient's service area have reasonably equal access to similar types of services. If the governing body of the recipient so desires, the types of services may vary so as to take into account different priorities in different parts of the recipient's service area, a higher incidence of a particular kind of legal problem, the considerably higher costs of providing services, or differences in

individual client financial resources. Consistent with the methods of delivery that are most effective and economical and the factors of § 1620.2(b), allocation of resources shall be reasonably proportional to the distribution of eligible clients within the recipient's service area, but this part shall not be interpreted to require any rigid standard for dollar expenditures or number of clients served.

§ 1620.4 [Amended]

12. Section 1620.4 is amended by removing the "(a)" designation at the beginning of the first paragraph and by removing the second paragraph in its entirety.

§ 1620.5 [Amended]

13. Section 1620.5 introductory text is amended by inserting the words "be set periodically and shall" after the word "shall" in the first sentence.

14. Section 1620.5 introductory text is further amended by removing the words "After the initial report described in § 1620.4(b)" and by removing the lower case "e" in the word "each" and inserting in its place a capital "E".

15. Section 1620.5 introductory text is further amended by inserting the words "and make available to the public" before the words "an annual report".

16. Section 1620.5 introductory text is further amended by removing the word "and" before the word "mechanisms".

17. Section 1620.5 introductory text is further amended by removing the words "schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review" and inserting in their place the words "policies and procedures established under § 1620.4 of these regulations as a result of the priority review and assessment".

Dated: November 21, 1985.

John H. Bayly, Jr.

General Counsel.

[FR Doc. 85-28227 Filed 11-25-85; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 85-36; FCC 85-588]

Review of Technical and Operational Requirements

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This action adopts Rule changes: (1) Affecting frequency authorization procedures; (2) allowing single sideband operation in the 944-952 MHz band; (3) permitting TV auxiliary use of UHF TV channels; (4) relaxing remote control rules; and (5) eliminating station identification requirement for fixed links.

This action is taken by the Commission in its efforts to relax restrictive regulations and policies.

The Rule changes are intended to provide broadcasters more flexibility in operating auxiliary systems and to promote spectrum efficiency.

EFFECTIVE DATE: December 16, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio Broadcasting, Television broadcasting.

Report and Order

In the matter of Review of Technical and Operational Requirements: Part 74-E Aural Broadcast STL and ICR Stations; and Part 74-F TV Auxiliary Broadcast Stations; MM Docket No. 85-36.

Adopted: October 31, 1985.

Released: November 7, 1985.

By the Commission.

Introduction/Background

1. The Commission has under consideration, a *Notice of Proposed Rule Making (Notice)* [1] in the above captioned matter and the comments and reply comments filed in response thereto.[2] The *Notice* proposed to revise certain rules covering technical and operational requirements for Studio to Transmitter Links (STL), Intercity Relay (ICR), Television Pickup (TVP), and Microwave Booster (booster) stations. These stations are used to transmit program material and control signals from the studio to the broadcast transmitter and for relay of material between locations. The proposed actions would allow more flexibility for licensees and provide for more efficient use of the spectrum.

Issue 1: Frequency Authorization Procedures

2. To accommodate more users in the 950 MHz aural STL/ICR band, the *Notice* proposed to divide the band into 25 kHz stackable segments and to mandate narrower channel bandwidths after a five year period. The proposed maximum authorized channel bandwidth would correspond to the type of service of the station.[3] Current 500 kHz wideband channel operation could continue in areas of the country where spectrum crowding is not a problem. Comment was solicited on appropriate guidelines to determine areas of the country that would be required to convert to narrow channels. Also proposed was division of the 1990-2110 and 6875-7125 MHz bands into 1 MHz segments which could be stacked to provide flexibility in system development and implementation.

Aural STL/ICR channel band plan

3. The NAB opposed mandatory bandwidth reduction (after July 1990) for STL/ICR channels stating that there is no assurance narrowband equipment could or would be developed, thus, leaving broadcasters unable to comply with a Commission regulation. Others expressed concern that a 250 kHz channel would probably not support stereophonic audio plus ancillary channels for remote control and Subsidiary Communications Authorizations (SCA).

4. Several comments presented evidence that narrowband channel operation is possible immediately or in the very near-term. SBE presented data measured under actual STL/ICR operating conditions during field tests conducted in the Los Angeles, California area (a very spectrum congested market). Based on the SBE experience,

[1] Adopted on February 12, 1985, 50 FR 8172 (February 28, 1985).

[2] Comments were filed by: Association of Federal Communications Consulting Engineers (AFCCE); Association of Maximum Service Telecasters (MST); CBS, Inc (CBS); Electronic Industries Association—Consumer Electronics Group (EIA-CEG); Electronic Industries Association—Fixed Point-to-point Section (EIA-EPP); Geostar Corp (Geostar); Hubbard Broadcasting, Inc. (Hubbard); Hughes Aircraft Company (Hughes); George Jackobs & Associates, Inc. (Jackobs); John E. Leonard (Leonard); Marti Electronics, Inc. (Marti); National Association of Broadcasters (NAB); National Broadcasting Company, Inc. (NBC); National Radio Broadcasting Association (NRBA); and Society of Broadcast Engineers (SBE). Reply comments were filed by: Hubbard; Hughes; and SBE.

[3] There is a severe shortage of 500 kHz channels in some areas to support the anticipated influx of new stations expected due to the rising costs of leased line facilities. SBE stated that, in some cases, costs for such services have gone up 300% to 1000% and that some stations may find it more economical to switch to a radio link.

both stereo and mono stations can be authorized the same bandwidths with a maximum of 250 kHz for AM stations and 375 kHz for FM stations, with no distinction between stereophonic and monophonic signals.

5. Leonard stated that "new technologies and techniques are available now to permit more efficient use of the spectrum available to this service. It is possible to design an aural STL system today using frequency modulation (FM) that provides 15 kHz audio response with a signal-to-noise ratio exceeding −70 dBm below program level and total harmonic distortion of less than .01%. Such a system using frequency modulation could exist in a total RF bandwidth of 125 kHz." He indicated that two such transmitters would only occupy 250 kHz of spectrum and that an additional 25 kHz channel could be authorized for secondary information. He also recommended that no distinction be made between AM and FM stations in regards to channel bandwidth.

6. Marti Electronics is presently producing and marketing narrowband systems internationally meeting the proposed channel bandwidths (although such bandwidths on the Marti system would not support stereo and a subcarrier service). The system includes two transmitters (and two receivers) using single carrier per channel (SCPC) techniques which are asserted to offer immunity to interference, lower cross talk, lower receiver noise threshold and higher signal to noise ratio than multiplexed (composite) FM systems in stereo STL/ICR service. Marti also recommended authorizing an additional 25 kHz channel to provide a 20–7500 Hz audio channel suitable for subcarrier operation.

7. Considering the limited availability of spectrum for this purpose, the current availability of equipment, the high cost of leased common carrier channels, and the additional demand upon the 950 MHz STL/ICR band to accommodate new licensees, we believe that action is warranted on this issue. The record strongly supports the feasibility of narrowband aural STL/ICR operation provided that our proposed authorized channel bandwidths are adjusted to permit SCA and remote control signals. From a practical standpoint, the benefits of a single bandwidth for both stereophonic and monophonic channels appear to outweigh the small savings in spectrum based on class of service.[4] Furthermore, the narrowband criteria of 300 kHz for FM and 200 kHz for AM stations appear to be a suitable compromise between our proposed narrower bandwidths and the wider bandwidths proposed in the comments. These bandwidths are capable of supporting full stereo audio and two limited audio channels.[5]

8. Although we solicited comment on how to select congested areas that would be authorized only narrowband operation, the record lacks any guidance in this area. The goal of this docket is to ensure that the spectrum is utilized efficiently and that additional stations can be accommodated. The NAB stated that broadcasters can and do work together to use narrower bandwidths as the technical means for doing so are developed. We encourage the industry to work together in achieving the most efficient use of spectrum and will, in this *Order*, provide incentives to foster this approach.

9. A prospective applicant might be accommodated if an existing station or stations were to modify their STL/ICR equipment to use less bandwidth or better reject adjacent channel interference. This could be accomplished, for example, by one or more of the following techniques: a frequency shift, more directive antennas, installation of cavity filters, replacement of transmitter and or receiver. We expect the applicant to negotiate with existing licensed stations to incorporate reasonable changes with the applicant bearing the cost of such changes. The existing stations must accept reasonable modifications (at no cost to themselves) provided that the modifications result in substantially the same capabilities (i.e. similar program channels, remote control channel, and SCA) and the same interference protection to those channels.

10. As an incentive to operate efficiently, we will allow narrow bandwidth stations (300 kHz for FM and 200 kHz for AM) to lease additional capacity for broadcast and other uses. This lease would be considered to be on a "primary basis" because the station would already be narrowband. Other stations, not already narrowband, may also lease additional capacity, on a "secondary basis" subject to availability of 950 MHz spectrum for broadcast use. These secondary leased facilities cannot be considered in negotiations between stations (as described in paragraph 9), nor will such a lease be considered a valid reason not to modify a link for narrowband operation. Thus, unless a licensee is operating under the narrowband criteria, lease of excess capacity is entirely at the licensee's own risk. (Local frequency coordinations may desire to keep information pertaining to leases with other station data in their data bases, conceivably to act as an informational clearinghouse with respect to leasing operations.)

Two and seven GHz TVP and booster band plan

11. This band plan proposed to allow the continued use of microwave systems currently in use in these bands while allowing industry to develop equipment with narrower channel bandwidths. The band plan based on stackable channel segments that we proposed is more flexible than the rigidly structured, fixed channel assignment presently mandated. This approach would allow continued use of all present and new equipment designed for the current channel structures in the microwave bands and give licensees and manufacturers the option of implementing new technologies and spectrum efficient techniques without need for further Commission action. Only rigidly structured channel constraints are removed and, therefore, no equipment or systems need become prematurely obsolete under this plan.

12. Some Electronic News Gathering (ENG) organizations in congested areas use multiple receiver sites. These stations can operate more than one narrowband FM transmitter simultaneously on a single channel when more than one feed is required. In these instances, some signal quality can be sacrificed in favor of the additional feed.[6] The goal of this *Order* is to ensure that the Rules contain the flexibility necessary to foster the continuation of such innovative and spectrum efficient operation.

13. The record supports the proposal provided that implementation of the band plan proceeds in an orderly manner. The record reflects that stations already operating on split channels in the 2 and 7 GHz bands would require a segment smaller than 1 MHz to be accommodated.[7] Segment sizes of 6.25 MHz, 250 kHz, and 125 kHz were suggested rather than the proposed 1 MHz segment. The EIA–FPP suggested segments of 8.5, 8.333, and 8 MHz based upon division of current channels into halves or thirds but made no showing that equipment would actually require such bandwidths. We note that 250 kHz segments would accomplish the goals set forth in the *Notice*, and accordingly,

[4] See SBE comments.

[5] See comments from Marti and Leonard.

[6] See CBS comments.

[7] See SBE comments.

are adopting the 250 kHz segment with maximum authorized channel bandwidths of 17 MHz in the 1990–2110 MHz band and 25 MHz in the 6875–7125 MHz band.

14. We will rely on the cooperation of licensees (for example, through local frequency coordinating committees) to decide upon the most efficient implementation of a band plan in each specific area. We expect that the conventional channel structure will serve as a guideline where possible to promote an organized transition as new technologies are developed and implemented.[8]

Issue 2: Emission Standards

15. The record supports revision of the emissions standards to include provision for Single Sideband (SSB) equipment to provide more flexibility in the design and operation of auxiliary systems. These standards are optional and the current FM standards will remain unchanged. Accordingly, the emission standards will be adopted as proposed.

Issue 3: TV auxiliary use of UHF-TV Channels

16. The EIA/CEG supported fixed auxiliary TVP sharing of the UHF-TV channels if the protection specified in Subpart G (Low Power TV and TV Translator Stations) is followed for the TVP stations. NBC, also supported fixed auxiliary sharing of the UHF-TV band on a secondary basis. Accordingly, auxiliary TVP sharing will be permitted on a secondary basis in the UHF TV band subject to the protection criteria in Subpart G.

17. Accordingly, we are adopting rules to permit fixed point-to-point auxiliary sharing of the UHF-TV band on a limited basis. These TV STL/ICR stations will be secondary to current and future full power TV allocations, LPTV authorizations, and translator authorizations. The STL/ICR licenses will also be secondary to current land mobile allocations and contingent upon the decisions of the pending *Notices of Proposed Rule Making* in Dockets 85–172 and 84–902 concerning additional use of the UHF-TV spectrum for land mobile operations.[9]

18. For processing purposes, we will apply the protection criteria specified in § 74.709 of the Rules to protect land mobile operations as allowed under Part 90, subpart L of the Rules.[10] The interim protection criteria detailed in paragraphs 35 and 36 of the *Notice of Proposed Rule Making* in Docket No. 85–172 will be used to protect land mobile operations proposed in Dockets 85–172 and 84–902, pending the outcome of those proceedings. These steps should avoid interference between broadcast auxiliary and land mobile operations.

Issue 4: Remote Control

19. The record supports revision of the remote control rules to provide more flexibility in the design and operation of auxiliary systems.[11] Accordingly, the remote control rules will be adopted as proposed. We note, however, the *Notice of Proposed Rule Making* (in MM Docket No. 85–225) [12] proposed total flexibility for remote control operations for Part 74–A Experimental Broadcast Stations and for Part 74–I Instructional Television Fixed Service stations. In light of that proposal, we may further revise the remote control rules adopted here in a rules oversight proceeding.

Issue 5: Modification of Station Identification Requirement

20. Auxiliary licensees are currently required to periodically identify their on-the-air signals. It appeared, initially, that this requirement could be eliminated for fixed transmitters. The record indicates, however, that prompt identification of interfering signals is imperative and frequently, the call sign information on signals is the only means to locate the source of interference. It was also asserted, that this requirement is not a burden on licensees and should remain intact. Accordingly, the identification requirements will remain unmodified.

Other Considerations

21. The proposed revision of § 74.502 clarifying the secondary status of TV licensees using the 950 MHz band for aural service (as set forth in § 74.603) received support and will be adopted as proposed.

22. The comment received from Jacobs pertains to authorizing a class of stations to the 950 MHz aural STL/ICR band. That comment is beyond the scope of this proceeding because the Commission did not propose such action in the *Notice* and cannot, in this *Order*, amend the Rules without due process as set forth by the Administrative Procedures Act (APA).

Regulatory Flexibility Final Analysis

23. *Need and purpose of this action:* Through this decision, the Commission hopes to increase spectrum efficiency while allowing licensees maximum flexibility. The lack of spectrum to accommodate demands for auxiliary broadcast services necessitates that the current bands be used more efficiently.

24. *Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:* No issues of significance were raised in addition to those set forth above.

25. *Significant alternatives considered and rejected:* The Commission considered the alternatives presented in the *Notice* and timely filed comments directed to the various issues in the *Notice*. After weighing all aspects of this proceeding, the Commission has adopted the course of action it deems most reasonable and as best service for the public interest under the Communications Act of 1934, as amended.

Paperwork Reduction Act

26. This order contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Actions

27. The Secretary shall cause a copy of this *Report and Order* including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), (1981).

28. Accordingly, it is ordered that Part 74 of the Commission's Rules is amended as set forth in the attached Appendix A, to be effective December 16, 1985.

29. It is furthered ordered that Part 74 of the Commission's Rules is amended as set forth in the attached Appendix B, to be effective on the date specified in a future order to be issued by the Chief, Mass Media Bureau indicating that appropriate computer programs are available for implementing the new rules.

30. The actions taken herein are pursuant to 5 U.S.C. 553(d)(i). Authority for the actions taken herein is contained

[8] See comments from EIA–FPP.

[9] See *Notice of Proposed Rule Making*, Gen. Docket No. 85–172, 50 FR 25587 (June 20, 1985); *Notice of Proposed Rule Making*, Gen. Docket No. 84–902, 49 FR 45875 (November 21, 1984); and *Further Notice of Proposed Rule Making*, Gen. Docket No. 84–902, 50 FR 19956 (May 13, 1985).

[10] See 47 CFR 90.301 through 90.315.

[11] See comments from CBS and NAB.

[12] Published as 50 FR 30979 (July 31, 1985).

in sections 4(i) and 303(r) of the Communications Act of 1935, as amended.

31. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Title 47 of the Code of Federal Regulations, Part 74 is amended (to be effective December 16, 1985) as follows:

PART 74—[AMENDED]

1. The authority citation for Part 74 continues to read as follows:

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

2. Section 74.501 is amended by revising paragraphs (a) and (b) to read as follows:

§ 74.501 Classes of stations.

(a) Aural broadcast STL station. A fixed station for the transmission of aural program material between the studio and the transmitter of a broadcasting station other than an international broadcasting station.

(b) Aural broadcast intercity relay (ICR) station. A fixed station for the transmission of aural program material between broadcasting stations other than international broadcasting stations.

* * * * *

3. Section 74.533 is amended by removing paragraph (a)(4) and revising paragraph (a) (1), (2), and (3), to read as follows:

§ 74.533 Remote control and unattended operation.

(a) * * *

(1) The remote control system must provide adequate monitoring and control functions to permit proper operation of the station.

(2) The remote control system must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(3) The remote control system must prevent inadvertent transmitter operation due to malfunctions in circuits between the control point and transmitter.

* * * * *

4. Section 74.535 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 74.535 Emission and bandwidth.

(a) For frequency modulation, the mean power of emissions shall be attenuated below the mean transmitter power (P) in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50% and up to 100% of the authorized bandwidth: at least 25 dB.

(2) On any frequency removed from the assigned frequency by more than 100% and up to 150% of the authorized bandwidth: at least 35 dB.

(3) On any frequency removed from the assigned frequency by more than 150% of the authorized bandwidth: at least 43 + 10 Log(P) dB.

(b) For all emissions except frequency modulation, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$$\text{Attenuation} = 29 \text{ Log} \left(\frac{25}{11} \left(D + 2.5 - \frac{W}{2} \right)^2 \right) \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement frequency (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43+10 Log (P) dB.

(c) In the event a station's emissions outside its authorized channel cause harmful interference, the Commission may require the licensee to take such further steps as may be necessary to eliminate the interference.

* * * * *

5. Section 74.536 is amended by revising paragraph (a) to read as follows:

§ 74.536 Directional antenna.

(a) Aural broadcast STL and ICR stations are required to use a directional antenna with the minimum beamwidth necessary, consistent with good engineering practice, to establish the link.

* * * * *

6. Section 74.550 is amended by revising the introductory text to read as follows:

§ 74.550 Equipment authorization.

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of notified or type accepted equipment, except that operation of 944–952 MHz equipment which has not been approved under the equipment authorization program may continue until July 1, 1990, after which, equipment must be approved. Requirements for obtaining a grant of equipment authorization are contained in Subpart J of Part 2 of the Rules. Equipment designed exclusively for fixed operation shall be authorized under notification procedure (see § 2.904(d) of this chapter).

* * * * *

7. Section 74.551 is amended by revising subparagraphs (a) (1) and (2) to read as follows:

§ 74.551 Equipment changes.

(a) * * *

(1) A change in the ERP.

(2) A change in the operating frequency or channel bandwidth.

* * * * *

§ 74.561 [Amended]

8. Section 74.561 Frequency tolerance is amended by removing and reserving paragraph (a).

9. Section 74.562 is amended by revising the introductory text to read as follows:

§ 74.562 Frequency monitors and measurements.

The licensee shall ensure that the STL, ICR, TVP, or booster transmitter does not exceed the emission limitations of § 74.535. This may be accomplished by appropriate frequency measurement techniques and consideration of the transmitter emissions.

* * * * *

10. Section 74.602 is amended by adding a new paragraph (i) to read as follows:

§ 74.602 Frequency assignment.

* * * * *

(i) TV STL and TV relay stations may be authorized, on a secondary basis and subject to the provisions of Subpart G of this chapter, to operate fixed point-to-point service on the UHF-TV channels 14–69. These stations must not interfere with and must accept interference from current and future full-power UHF-TV stations, LPTV stations, translator stations. They will also be secondary to

current land mobile stations (in areas where land mobile sharing is currently permitted and contingent on the decision reached in the pending Dockets No. 85–172 and No. 84–902).

11. Section 74.634 is amended by removing subparagraph (a)(4) and revising paragraphs (a) (1), (2), and (3) to read as follows:

§ 74.634 Remote control.

(a) * * *

(1) The remote control system must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(2) The remote control equipment must be maintained to ensure proper operation.

(3) The remote control system must be designed to prevent inadvertent transmitter operation caused by malfunctions in the circuits between the control point and transmitter.

* * * * *

12. Section 74.637 is amended by revising paragraphs (a) and (b), and adding a new paragraph (f) to read as follows:

§ 74.637 Emissions and emission limitations.

(a) For frequency modulation, the mean power of emissions shall be attenuated below the mean transmitter power (P) in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50% and up to 100% of the authorized bandwidth: at least 25 dB.

(2) On any frequency removed from the assigned frequency by more than 100% and up to 150% of the authorized bandwidth: at least 35 dB.

(3) On any frequency removed from the assigned frequency by more than 150% of the authorized bandwidth: at least 43+10 Log(P) dB.

(b) For all emissions except frequency modulation, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$$\text{Attenuation} = 29 \text{ Log} \left(\frac{25}{11} \left(D + 2.5 - \frac{W}{2} \right)^2 \right) \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement frequency (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43+10 Log (P) dB.

* * * * *

(f) In the event a station's emissions outside its authorized channel cause harmful interference, the Commission may require the licensee to take such further steps as may be necessary to eliminate the interference.

Appendix B

PART 74—[AMENDED]

Title 47 of the Code of Federal Regulations, Part 74 is amended (to be implemented on the date specified in a future order to be issued by the Chief Mass Media Bureau) as follows:

1. The authority citation for Part 74 continues to read as follows:

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

2. Section 74.502 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

§ 74.502 Frequency assignment.

(a) The frequency band 944–952 MHz is available for assignment to aural STL and ICR stations. AM and FM broadcast stations shall have primary use of the band; however, TV broadcast stations may be licensed on a secondary, noninterference basis. One or more of the following 25 kHz segments may be stacked to form a channel which may be assigned with a maximum authorized bandwidth of 300 kHz except as noted below. The channel, will be assigned by its center frequency, channel bandwidth, and emission designator. The following frequencies are the centers of each segment:

944.0125, 944.0375, 944.0625, 944.0875, 944.1125, 944.1375, 944.1625, 944.1875, 944.2125, 944.2375, 944.2625, 944.2875, 944.3125, 944.3375, 944.3625, 944.3875, 944.4125, 944.4375, 944.4625, 944.4875, 944.5125, 944.5375, 944.5625, 944.5875, 944.6125, 944.6375, 944.6625, 944.6875, 944.7125, 944.7375, 944.7625, 944.7875, 944.8125, 944.8375, 944.8625, 944.8875, 944.9125, 944.9375, 944.9625, 944.9875, 945.0125, 945.0375, 945.0625, 945.0875, 945.1125, 945.1375, 945.1625, 945.1875, 945.2125, 945.2375, 945.2625, 945.2875, 945.3125, 945.3375, 945.3625, 945.3875, 945.4125, 945.4375, 945.4625, 945.4875, 945.5125, 945.5375, 945.5625, 945.5875, 945.6125, 945.6375, 945.6625, 945.6875, 945.7125, 945.7375, 945.7625, 945.7875, 945.8125, 945.8375, 945.8625, 945.8875, 945.9125, 945.9375, 945.9625, 945.9875, 946.0125, 946.0375, 946.0625, 946.0875, 946.1125, 946.1375, 946.1625, 946.1875, 946.2125, 946.2375, 946.2625, 946.2875, 946.3125, 946.3375, 946.3625, 946.3875, 946.4125, 946.4375, 946.4625, 946.4875, 946.5125, 946.5375, 946.5625, 946.5875, 946.6125, 946.6375, 946.6625, 946.6875, 946.7125, 946.7375, 946.7625, 946.7875, 946.8125, 946.8375, 946.8625, 946.8875, 946.9125, 946.9375, 946.9625, 946.9875, 947.0125, 947.0375, 947.0625, 947.0875, 947.1125, 947.1375, 947.1625, 947.1875, 947.2125, 947.2375, 947.2625, 947.2875, 947.3125, 947.3375, 947.3625, 947.3875, 947.4125, 947.4375, 947.4625, 947.4875, 947.5125, 947.5375, 947.5625, 947.5875, 947.6125, 947.6375, 947.6625, 947.6875, 947.7125, 947.7375, 947.7625, 947.7875, 947.8125, 947.8375, 947.8625, 947.8875, 947.9125, 947.9375, 947.9625, 947.9875, 948.0125, 948.0375, 948.0625, 948.0875, 948.1125, 948.1375, 948.1625, 948.1875, 948.2125, 948.2375, 948.2625, 948.2875, 948.3125, 948.3375, 948.3625, 948.3875, 948.4125, 948.4375, 948.4625, 948.4875, 948.5125, 948.5375, 948.5625, 948.5875, 948.6125, 948.6375, 948.6625, 948.6875, 948.7125, 948.7375, 948.7625, 948.7875, 948.8125, 948.8375, 948.8625, 948.8875, 948.9125, 948.9375, 948.9625, 948.9875, 949.0125, 949.0375, 949.0625, 949.0875, 949.1125, 949.1375, 949.1625, 949.1875, 949.2125, 949.2375, 949.2625, 949.2875, 949.3125, 949.3375, 949.3625, 949.3875, 949.4125, 949.4375, 949.4625, 949.4875, 949.5125, 949.5375, 949.5625, 949.5875, 949.6125, 949.6375, 949.6625, 949.6875, 949.7125, 949.7375, 949.7625, 949.7875, 949.8125, 949.8375, 949.8625, 949.8875, 949.9125, 949.9375, 949.9625, 949.9875, 950.0125, 950.0375, 950.0625, 950.0875, 950.1125, 950.1375, 950.1625, 950.1875, 950.2125, 950.2375, 950.2625, 950.2875, 950.3125, 950.3375, 950.3625, 950.3875, 950.4125, 950.4375, 950.4625, 950.4875, 950.5125, 950.5375, 950.5625, 950.5875, 950.6125, 950.6375, 950.6625, 950.6875, 950.7125, 950.7375, 950.7625, 950.7875, 950.8125, 950.8375, 950.8625, 950.8875, 950.9125, 950.9375, 950.9625, 950.9875, 951.0125, 951.0375, 951.0625, 951.0875, 951.1125, 951.1375, 951.1625, 951.1875, 951.2125, 951.2375, 951.2625, 951.2875, 951.3125, 951.3375, 951.3625, 951.3875, 951.4125, 951.4375, 951.4625, 951.4875, 951.5125, 951.5375, 951.5625, 951.5875, 951.6125, 951.6375, 951.6625, 951.6875, 951.7125, 951.7375, 951.7625, 951.7875, 951.8125, 951.8375, 951.8625, 951.8875, 951.9125, 951.9375, 951.9625, 951.9875.

(1) A single broadcast station may be authorized up to a maximum of twenty segments (500 kHz total bandwidth) for transmission of program material between a single origin and one or more designations. The station may lease excess capacity for broadcast and other uses on a secondary basis, subject to availability of spectrum for broadcast use. However, an FM station licensed

for twelve or fewer segments (300 kHz total bandwidth) or an AM station licensed for eight or fewer segments (200 kHz total bandwidth) may lease excess capacity for broadcast and other uses on a primary basis.

(2) An applicant (new or modification of existing license) may assume the cost of replacement of one or more existing licensees equipment with narrowband equipment of comparable capabilities and quality in order to make available spectrum for its facilities. Existing licensees must accept such replacement without cost to them except upon a showing that the replacement equipment does not meet the capability or quality requirements.

* * * * *

(c) [Reserved]

* * * * *

3. Section 74.602 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available to broadcast licensees for assignment to television pickup, television STL, and television relay stations. The bands 1990–2110 and 6875–7125 MHz are divided into 250 kHz segments. (The segment frequencies are from 1990.125 to 2109.875 MHz and from 6875.125 to 7124.875 MHz.) The segments may be combined to form a channel of appropriate bandwidth necessary to transmit television signals, but not exceeding that listed in the table below. The channel, will be assigned by its center frequency, channel bandwidth, and emission designator. It is recommended that channels be assigned according to the table below, provided that such channel bandwidths not exceed requirements. The bands 17,700–18,580 and 19,260–19,700 Mhz are available as described in paragraph (i) below. Additionally, the band 38.6–40.0 GHz is available for assignment without channel bandwidth limitations to TV pickup stations on a secondary basis to fixed stations.

* * * * *

[FR Doc. 85–27054 Filed 11–25–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket Nos. 50720-5154 and 50834-5167]

Groundfish of the Gulf of Alaska and Goundfish of the Bering Sea and Aleutian Islands Area; Corrections

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

ACTION: Final rules; correction.

SUMMARY: This document corrects the catcher/processor and mothership reporting regulations that were established by Amendment 14 to the Fishery Management Plan for Goundfish of the Gulf of Alaska, published October 24, 1985, 50 FR 43193, and by Amendment 9 to the Fishery Management Plan for the Groundfish of the Bering Sea and Aleutian Islands Area, published November 6, 1985, 50 FR 46072.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist), 907–586–7320.

Dated: November 21, 1985.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 672—[AMENDED]

§ 672.5 [Corrected]

In FR Doc. 85–25143, published October 24, 1985, § 672.5(a)(3)(i), page 43201, column 1, the fourth word from the end of the first sentence, "area" is corrected to read "position."

PART 675—[AMENDED]

§ 675.5 [Corrected]

In FR Doc. 85–26534, published November 6, 1985, § 675.5(a)(3)(i), page 46075, column 3, the fourth word from the end of the first sentence, "area" is corrected to read "position."

The corrected sentence for both rules now reads:

> Twenty-four hours before starting and upon stopping fishing or receiving Groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the position of such activity.

[FR Doc. 85–28190 Filed 10–21–85; 4:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 228
Tuesday, November 26, 1985

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

Animal and Plant Health Inspection Service

9 CFR Parts 51, 71, 78, 80, and 92

[Docket No. 85-118]

Brucellosis Regulations; Interstate Movement of Cattle, Bison, and Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: This document reopens the comment period for a proposed rule which proposed to amend the regulations governing the interstate movement of cattle, bison, and swine as related to brucellosis. This action is needed to allow industry representatives and other interested persons adequate time in which to prepare comments.

DATE: Written comments must be received on or before December 26, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hayttsville, MD 20782. Comments should state that they are in response to Docket Number 83-106. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, expect holiday.

FOR FURTHER INFORMATION CONTACT: Dr. Granville H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION: On September 12, 1985, the Department published in the **Federal Register** (50 FR 37201-37229) a document which proposed to amend the regulations governing the interstate movement of cattle, bison, and swine as related to brucellosis (contained in 9 CFR Part 78). It was proposed to amend the regulations to clarify definitions and interstate movement requirements, provide for additional restrictions on the interstate movement of cattle in order to reduce the risk of interstate spread of brucellosis, and provide for alternate methods of moving cattle and bison interstate which would not increase the risk of the interstate spread of brucellosis. It was also proposed to make certain corresponding changes in 9 CFR Parts 51, 71, 80, and 92.

The proposed rule provided for receipt for comments on or before November 12, 1985. An industry representative has requested additional time to review the proposal and offer substantive comments. It has been determined that additional time is needed to allow industry representatives and other interested persons adequate time in which to prepare comments. Therefore, the comment period is reopened for an additional 30 days. Accordingly, any additional written comments must be received on or before December 26, 1985.

Done at Washington, DC, this 21st day of November 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-28186 Filed 11-25-85; 8:45 am]

BILLING CODE 3410-34-M

RAILROAD RETIREMENT BOARD

20 CFR PART 261

Reopening of Decisions Regarding Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes to adopt regulations pertaining to the reopening of decisions pertaining to the award or denial of benefits under the Railroad Retirement Act.

DATE: Comments must be received on or before December 26, 1985.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 387-4929).

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions are presently contained in a Board Order, which is not readily available to the public. The proposed regulations require the reopening of an award of benefits for reduction or cancellation whenever that award is clearly erroneous; when it is not clearly erroneous but would not have been made if evidence subsequently received by the Board had been available at the time of the decision and was not available due to fraud on fault; when an adverse claim has been awarded based on the same earnings and compensation record; when the award is of a benefit based on the compensation and service of a deceased individual and it is thereafter established that the applicant was finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of the deceased individual; and where it is to the advantage of the annuitant to change his or her annuity beginning date or remove crediting of his or her military service.

Certain incorrect decisions where the annuitant is not at fault will not be reopened: where the annuitant is employed at the time of the award (though this exclusion will not permit the annuitant to be entitled to benefits for the time he or she is so employed); and where there is an erroneous crediting of six or less months of service and eligibility for an annuity being received is dependent on the crediting of this service.

The regulations also provide for reopening of denials of claims and for the reopening of awards for the purpose of increasing the amount of the award. Reopening of decisions in these cases depends on various factors, including the length of time which has elapsed since the decision; the responsibility of the applicant in not providing earlier the new evidence on which the request for reopening is based; the value of the new evidence; the responsibility of the Board in previously applying law or evaluating evidence incorrectly; and whether reopening will result in a large retroactive payment or entitlement to a greater current entitlement or both.

The regulations also provide discretion to the three-member Board to reopen or refuse to reopen decisions in cases not falling within the parameters of the regulations, and delegate authority and jurisdiction within the Railroad Retirement Board for decisions on reopening.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 261

Railroad employees, Railroad retirement.

The Board's regulations under the Railroad Retirement Act (20 CFR 200–266) are hereby amended by adding thereto a new Part 261 as follows:

PART 261—REOPENING FINAL DECISIONS UNDER THE RAILROAD RETIREMENT ACT

Sec.

261.1 Reopening of a final certification.
261.2 Reopening of an erroneous decision denying a claim and of a certification with a view to increasing the amount thereof.
261.3 Change of legal interpretation or administrative ruling.
261.4 Reopening of decision denying a claim based on lack of proof of death.
261.5 Retroactivity of certification.
261.6 Authority to reopen claims.
261.7 Reopening by the Board.

Authority: 45 U.S.C. 231f(b)(5).

§ 261.1 Reopening of a final certification.

(a) A final certification shall be reopened for reduction or cancellation:

(1) When, except as provided in paragraph (c) of this section, the certification was clearly erroneous. If, in any of the cases falling within this category of clearly erroneous certification, reopening results in reduction or cancellation of benefits, past payments must be recovered unless recovery is waived under section 10(c) of the Railroad Retirement Act.

(2) When the certification, although not clearly erroneous, would not have been made if evidence subsequently received by the Board had been available at the time the certification was made, and the failure to make such evidence known to the Board prior to the time of the certification is attributable to fraud or fault on the part of the applicant or some other person;

(3) When an adverse claim has been awarded against the same compensation and service record;

(4) When the certification is based upon a determination that an applicant is entitled to an annuity or to a lump-sum death benefit based on the compensation and service of a deceased individual and it is thereafter established that the applicant was finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of such deceased individual;

(5) When the applicant shows that it is to his or her advantage to select a later annuity beginning date and refunds by cash payment or setoff past payments applying to the period prior to the later beginning date, subject, however, to the provisions of § 218.9 of this chapter;

(6) When military service has been included in the computation of an annuity and it subsequently appears that the elimination of the credit for military service will aid the annuitant in establishing eligibility for a benefit under the Social Security Act, or will significantly benefit him or her financially (in such cases, the portion of past annuity payments attributable to military service shall be recovered).

(b) In no other case may a certification be reopened for reduction or cancellation.

(c) For purposes of paragraph (a)(1) of this section the following certifications shall not be considered clearly erroneous:

(1) An award of an annuity beginning date to an applicant later found to have been in compenstated service on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the applicant is found to be engaged in that compensated service;

(2) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to an applicant where:

(i) The loss of such months of service and compensation will cause the applicant to lose his or her eligibility for an annuity previously awarded; and

(ii) The erroneously credited months of service do not exceed six months; and

(iii) The applicant is found not to be at fault in causing the erroneous crediting;

(3) In any other case in which the Board deems it proper to do so, the Board may direct that certification of an award or a component thereof shall not be reopened.

§ 261.2 Reopening of an erroneous decision denying a claim and of a certification with a view to increasing the amount thereof.

A decision denying a claim, which decision is subsequently found to be erroneous, may be reopened. A final certification may be reopened with a view to increasing the amount thereof. Factors to be taken into consideration in determining whether such a decision or certification is to be reopened include, but are not limited to, the following:

(a) The length of time which has elapsed since the denial;

(b) The responsibility of the applicant in not providing the new evidence, if any, upon which the request for reopening is based, at the time the original claim was made or at some other time prior to the date of the request for reopening;

(c) The weight or probative value of any new evidence;

(d) The responsibility of the Board in previously applying law or evaluating evidence incorrectly;

(e) Whether reopening will result in a large retroactive payment or in entitlement to a greater current benefit or both.

§ 261.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling shall not render an earlier decision erroneous for purposes of the preceding provisions of this Part.

§ 261.4 Reopening of decision denying a claim based on lack of proof of death.

Where a claim for benefits has been denied because the individual on whose account the benefit is being claimed has not been unexplainedly absent for the time period required to establish proof of death, the claim may be reopened when proof of death is established.

§ 261.5 Retroactivity of certification.

If reopening under § 261.2 results in a favorable decision, the certification may be retroactive to the earliest permissible beginning date or to the date selected by the applicant, whichever is later, or to some other date, subsequent to the later of those two dates, considered equitable under the factors specified in § 261.2.

§ 261.6 Authority to reopen claims.

(a) Subject to the limitation in paragraph (b) of this section, the Associate Executive Director for Retirement Claims, and such employees in the Bureau of Retirement Claims who are in positions grade GS–7 or higher as may be selected by that Associate Executive Director shall have the authority to reopen claims under the provisions of §§ 261.1, 261.2, and 261.4.

(b) The Bureau of Retirement Claims may not reopen any claim on which a decision has been made by an appeals referee or by the Board.

(c) The Bureau of Hearings and Appeals may reopen, under the provisions of §§ 261.1, 261.2, and 261.4 of

this Part, any claims on which an appeals referee has rendered a decision, provided that such reopening is effected within four months after notice of the decision of the appeals referee is forwarded to the applicant.

(d) The Bureau of Hearings and Appeals may not reopen any claim on which a final decision has been made by the Board.

§ 261.7 Reopening by the Board.

Any final decision which it is believed should be reopened but which cannot be reopened under the preceding provisions of this Part shall be transmitted to the Board, with a recommendation for reopening, by the Association Executive Director for Retirement Claims or by the Director of Hearings and Appeals, depending upon which bureau made the decision in question, or the Board may, on its own initiative, consider reopening a final decision. If the Board reopens a decision, certification or recertification shall be retroactive unless the Board determines, as a condition of reopening, that the award or increase shall not be retroactive.

Dated: November 18, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-28123 Filed 11-25-85; 8:45 am]

BILLING CODE 7905-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 3 and 61

Organization of Panama Canal Commission; Health, Sanitation, and Quarantine

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal is proposing to amend its regulations in Title 35, Code of Federal Regulations, Part 3, Organization of Panama Canal Commission and Part 61, Subpart E, which pertain to health, sanitation, and communicable disease surveillance. Part 3 sets forth the text of an obsolete executive order concerning delegations of authority and is being amended to set forth the executive order which is not applicable. As for Part 61, many of the functions regulated by Subpart E have been, in accordance with the Panama Canal Treaty of 1977 and its related agreements, transferred to the Republic of Panama, thus making certain provisions obsolete and requiring their removal. Additional changes, reflecting the international character of the Panama Canal, are consistent with recommendations of the World Health Organization and the joint efforts of the Republic of Panama and the Commission, pursuant to the treaty, in the areas of maritime health, sanitation, and communicable diseases.

DATE: Comments should be received by December 26, 1985.

ADDRESSES: Comments should be sent to Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, D.C. 20036 or Panama Canal Commission, Office of General Counsel, APO Miami, Florida 34011.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634-6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION: Executive Order 12173 of December 19, 1979, was promulgated in response to the enactment of the Panama Canal Act of 1979, Pub. L. 96-70. The Panama Canal Act repealed many of the grants of authority concerning the Panama Canal and enacted new grants of authority, consistent with the Panama Canal Treaty of 1977. Executive Order 12173 continued in effect the regulations promulgated under the prior statutes. This executive order has lapsed, in accordance with its terms, and has been superseded by Executive Order 12215 of May 27, 1980. By Executive Order 12215 the President of the United States has delegated specific functions vested in him by the Panama Canal Act of 1979 to the Secretaries of Defense and State. Consequently, it is proposed to amend 35 CFR Part 3 by removing E.O. 12173 and inserting E.O. 12215.

Subpart E of Part 61 deals with health, sanitation, and communicable disease surveillance. The amendment of Subpart E is necessary to eliminate or revise certain regulations dealing with functions which are no longer the responsibility of the Panama Canal Commission, as a result of the entry into force of the Panama Canal Treaty of 1977 between the United States and the Republic of Panama and the enactment of legislation implementing the terms of that international accord. Nevertheless, Article III of the Treaty provides that the United States may take such measures necessary to ensure the sanitation of Panama Canal areas and installations. The Commission is charged with performing functions required to carry out industrial sanitation and health services. As amended, this subpart would deal primarily with communicable disease surveillance of vessels entering the waters of the Panama Canal.

In this regard, all references to aircraft have been removed, inasmuch as the authority to issue regulations concerning air navigation has been superseded by virtue of the treaty. The authority to control the importation of certain articles has also been removed, with the sole exception of section 61.281, concerning dogs and cats, which has been revised to indicate that arrangements shall be made with the appropriate veterinary authorities.

Other changes have been made to reflect the recommendations of the World Health Organization and the coordinated efforts of the Commission's Occupational Health Division and the Port Quarantine Office of the Government of Panama to insure the health and safety of employees and the general public.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Parts 3 and 61

Authority delegations, Executive orders, Public health, Sanitation, Communicable disease, Vessels, Quarantine, Occupational health, and safety.

Accordingly, it is proposed to amend 35 CFR Parts 3 and 61, as follows:

1. Part 3 is amended by revising § 3.1 to read as follows:

PART 3—ORGANIZATION OF PANAMA CANAL COMMISSION

Subpart A—Delegation of Panama Canal Functions

§ 3.1 Text of Executive Order 12215 of May 27, 1980.

By the authority vested in me as President of the United States of America by the Panama Canal Code (76A Stat. 1), as amended, by the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 *et seq.*), and by section 301 of Title 3 of the United States Code, is hereby ordered as follows:

1-1. The Secretary of Defense.

1-101. The Secretary of Defense shall develop for the President's consideration an appropriate legislative proposal as required by Section 3(d) of the Panama Canal Act of 1979 (93 Stat. 456; 22 U.S.C. 3602(d)). The Secretary of Defense shall coordinate development of this proposal with the Secretary of State and the heads of other interested Executive agencies.

1-102. The function vested in the President by Section 1212(d)(1) of the Panama Canal Act of 1979 (93 Stat. 464; 22 U.S.C. 3652(d)(1)) to exclude employees of, or positions within, the Department of Defense from coverage under any provision of subchapter II, Chapter 2 of Title I of the Panama Canal Act of 1979, is delegated to the Secretary of Defense.

1-103. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-104. The function vested in the President by Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, is delegated to the Secretary of Defense.

1-105. The functions vested in the President by Sections 1243(c)(1) and 2401 of the Panama Canal Act of 1979 (93 Stat. 474 and 495; 22 U.S.C. 3681(c)(1) and 3851) are delegated to the Secretary of Defense.

1-106. The functions vested in the President by Section 1502(a) of the Panama Canal Act of 1979 (93 Stat. 488; 22 U.S.C. 3782(a)) are delegated to the Secretary of Defense.

1-2. Coordination of Pay and Employment Practices.

1-201. In order to coordinate the policies and activities of agencies under subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651 *et seq.*), each agency shall periodically consult with the Secretary of Defense with respect to the establishment of rates of pay, in order to develop compatible or unified systems for basic pay. In addition, each agency shall consult with the Secretary of Defense on such other matters as the Secretary may deem appropriate in order to develop compatible or unified employment practices.

1-202. The head of each agency shall, upon approval by the Secretary of Defense, adopt a schedule of basic pay pursuant to Section 1215 of the Panama Canal Act of 1979 (93 Stat. 465; 22 U.S.C. 3655) and adopt regulations governing other matters relating to pay and employment practices.

1-203. The authority vested in the President by Section 1223(a) of the Panama Canal Act of 1979 to coordinate the policies and activities of agencies (93 Stat. 467; 22 U.S.C. 3663(a)) is delegated to the Secretary of Defense.

The Secretary shall exercise such functions in a manner which is in accord with the provisions of Sections 1-201 and 1-202 of this order.

1-3. Panama Canal Commission.

1-301. The functions vested in the President and delegated to the Secretary of Defense in this Section 1-3 of this Order shall be carried out by the Secretary of Defense, who shall, in carrying out the said functions, provide, by redelegation or otherwise, for their performance, in a manner consistent with paragraph 3 of Article III of the Panama Canal Treaty of 1977, by the Panama Canal Commission.

1-302. The authority of the President under Section 1104 of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S.C. 3614) to fix the compensation of and to define the authorities and duties of the Deputy Administrator and the Chief Engineer is delegated to the Secretary of Defense.

1-303. The functions vested in the President by Sections 1418, 1801, and 2206 of the Panama Canal Act of 1979 (93 Stat. 487, 492, and 494; 22 U.S.C. 3778, 3811, and 3844) are delegated to the Secretary of Defense.

1-304. The authority of the President under Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801) with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-305. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations in the Republic of Panama made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-306. The functions vested in the President by Sections 82 and 86 of Title 3 of the Panama Canal Code (76A Stat. 54 and 55; 3 P.C.C. 82 and 86), as amended, are delegated to the Secretary of Defense.

1-307. The functions vested in the President by subsections (a), (b), and (c) of Section 8146 of Title 5 of the United States Code, as they apply to the employees of the Panama Canal Commission, are delegated to the Secretary of Defense.

1-308. Except to the extent heretofore delegated, the functions vested in the President pursuant to subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463) are hereby delegated to the Secretary of Defense.

1-4. Other Agencies.

1-401. The functions vested in the President by Sections 1111 and 3301 of the Panama Canal Act of 1979 (93 Stat. 459 and 497; 22 U.S.C. 3621 and 3871), are delegated to the Secretary of State. The Secretary shall perform these functions in coordination with the Secretary of Defense.

1-402. The functions vested in the President by Sections 1112(d), 1344(b), and 1504(b) of the Panama Canal Act of 1979 (93 Stat. 460, 484, and 488; 22 U.S.C. 3622(d), 3754(b), and 3784(b)) are delegated to the Secretary of State.

1-403. The functions vested in the President by Section 1243(a)(1) of the Panama Canal Act of 1979 (93 Stat. 473; 22 U.S.C. 3681(a)(1)) are delegated to the Director of the Office of Personnel Management.

1-404. Paragraphs (22) and (23) of Section 1 of Executive Order No. 11609, as amended, and Executive Order No. 11713 are revoked.

(Issued under the authority vested in President by provisions of 3 U.S.C. 301; 22 U.S.C. 3811; EO 12215, dated May 27, 1980, 45 FR 36043)

2. The table of contents for subpart E of Part 61 is revised to read as follows:

PART 61—HEALTH, SANITATION, AND COMMUNICABLE DISEASE SURVEILLANCE

* * * * *

Subpart E—Maritime Communicable Disease Surveillance

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61.123 Periods of isolation and surveillance.
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61.224 Plague; vessels.
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Sanitary Inspection: Rodent and Vermin Control

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61.243 Deratting Certificates; Deratting Exemption Certificates.
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Pratique: Vessels

61.261 General requirements.
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61.263 Provisional pratique.
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Importation of Dogs and Cats

61.281 Quarantine of dogs and cats.

Authority: Issued under authority vested in the President by 22 U.S.C. 3811; EO 12215, 45 FR 36043.

3. Subpart E of Part 61 is revised to read as follows:

* * * * *

Subpart E—Maritime Communicable Disease Surveillance

Definitions and General Provisions

§ 61.121 Purpose.

The purpose of the regulations in this subpart is to insure the health and safety of employees of the Panama Canal Commission, to prescribe procedures for coordination with the Government of Panama concerning communicable disease surveillance, and to comply with the recommendations of the World Health Organization concerning such surveillance.

§ 61.122 Definitions.

As used in this subpart:

"Aedes aegypti Index" means the ratio, expressed as a percentage, between the number of houses in a limited well-defined area on the premises of which actual breeding-places of Aedes aegypti are found, and the total number of houses examined in that area.

"Certificate of vaccination" means a certificate of vaccination or revaccination against cholera, smallpox or yellow fever conforming with the rules and models prescribed by the International Health Regulations.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a well person from an affected person, animal, or arthropod (including insecta and arachnida) or through the agency of an intermediate host, vector or the inanimate environment.

"Communicable disease surveillance" means the surveillance or quarantine of a person, vessel, or other conveyance, animal or thing, in such place and for such period of time as may be specified in the regulations in this subpart.

"Contamination" means the presence of undesirable substance or material which may contain pathogenic micro-organisms.

"Day" means a period of 24 hours.

"Deratting certificate" means a certificate issued with respect to a vessel by the competent health authority of a port, in the form prescribed by the International Health Regulations, recording the inspection and deratting of the vessel.

"Deratting exemption certificate" means a certificate issued with respect to a vessel by the competent health authority of a port, in the form prescribed by the International Health Regulations, recording the inspection and exemption from deratting of the vessel which has a negligible number of rodents on board.

"Disinfection" means the act of rendering anything free from the causal agents of disease.

"Disinfestation" means the act of destroying the vectors of a communicable disease.

"Disinsecting" means the act of destroying insects or other anthropod vectors of communicable disease.

"Foreign port" means any seaport other than a port of the United States or of the Republic of Panama.

"Fumigation" means the process by which the destruction of vermin and rodents is accomplished by the employment of gaseous agents.

"Immunity" means the condition of being protected against a particular disease, either as a result of artificial immunization or through a previous attack of the disease in question.

"Incubation period" means the period between the implanting of disease organisms in a susceptible person and the appearance of clinical manifestations of the disease.

"Infected area" means an area (as defined in the International Health Regulations): (1) Where there is a nonimported case of cholera or smallpox; or (2) where there is a nonimported case of plague, or there is plague infection among rodents; or (3) where there is a nonimported case of yellow fever, or there is activity of yellow fever virus in vertebrates other than man.

"Infected person" means any person who is suffering from a quarantinable disease or who is considered by the medical officer in charge to be infected with such a disease.

"Infected vessel" means a vessel determined to be infected with an internationally quarantinable disease, as recognized by the World Health Organization (WHO).

"International Health Regulations" means the regulations adopted by the 22nd World Health Assembly in 1969, as amended by subsequent Assemblies for the International Surveillance of Communicable Diseases, (3rd Edition, Annotated, 1983).

"Isolation" means (1) when applied to a person or group of persons, the separation of that person or group of

persons from other persons in such a manner as to prevent the spread of infection; and (2) when applied to animals, the separation of an animal or group of animals from other animals or vestors of disease in such a manner as to prevent the spread of infection.

"Medical officer" means the officer or other specially trained employee assigned to communicable disease surveillance duty by authority of the Chief, Occupational Health Division.

"Medical officer in charge" means the officer of the Panama Canal Commission responsible for the application of these regulations at a designated place or in a designated area.

"Port of Panama" means any seaport in the Republic of Panama.

"Port of the United States" means any seaport in the United States, in the Commonwealth of Puerto Rico, and in territories or possessions of the United States.

"Pratique" means authorization granted by the medical officer in charge in writing or via radio releasing or provisionally releasing a vessel from quarantine, without relieving the vessel from completing the necessary documentation.

"Quarantinable disease" means a specific communicable disease such as cholera, plaque, smallpox, or yellow fever for which WHO requires specific quarantine measures.

"Rodents" means gnawing mammals capable of transmitting or harboring quarantinable diseases.

"Suspect" means a person who is considered by the medical officer in charge as having been exposed to infection by a quarantinable or other dangerous infectious disease and to be capable of spreading that disease.

"Suspected vessel" means a vessel that is suspected to be infected with an internationally quarantinable disease as recognized by WHO.

"Valid" means (1) with respect to a Deratting Certificate or Deratting Exemption Certificate issued for a vessel, a certificate issued by the competent health authority for a port not more than 6 months before presentation of the certificate to the medical officer, or if the vessel is proceeding to a port designated or approved for the issuance of such certificates, not more than 7 months before such presentation; and (2) with respect to a Certificate of Vaccination, a certificate presented within the applicable period of immunity prescribed in § 61.124.

"Vector" means an animal (including insects), plant, or thing which conveys or is capable of conveying pathogenic organisms from a person or animal to another person or animal.

"WHO" means the World Health Organization, an international organization which acts as the directing and coordinating authority on international health work and is charged with eradicating or controlling epidemic, endemic and other diseases.

"Yellow fever receptive areas" means an area in which the virus of yellow fever does not exist but where the presence of Aedes aegypti or any other domiciliary or peri-domiciliary vector of yellow fever would permit its development if introduced.

§ 61.123 Periods of isolation and surveillance.

Except as otherwise provided with respect to infected persons, isolation or surveillance shall not exceed the following appropriate incubation period for internationally quarantinable diseases:

(a) Plague: 6 days.
(b) Cholera: 5 days.
(c) Yellow fever: 6 days.
(d) Smallpox: 14 days.

§ 61.124 Periods of immunity.

The following shall be the recognized period of immunity after successful immunization:

(a) Cholera: 6 months, beginning 6 days after the first injection of the vaccine or on the date of a revaccination during such six-month period.

(b) Smallpox: 3 years, beginning 8 days after successful primary vaccination or immediately on revaccination.

(c) Yellow fever: 10 years beginning 10 days after date of original vaccination or from date of a revaccination within such period of 10 years.

§ 61.125 Sanitary measures previously applied.

(a) Required sanitary measures (other than a medical examination) taken by a vessel with respect to a quarantinable disease need not be repeated upon the vessel's arrival in Panama Canal waters, unless—

(1) After the departure of a vessel from the port where the measures were applied there is or has been on board an infected person or suspect or there has occurred any other incident of epidemiological significance either in that port or on board the vessel which, in the judgment of the medical officer in charge, requires further application of any such measure; or

(2) The medical officer in charge has ascertained, on the basis of definite evidence, that the individual measure so applied was not substantially effective.

(b) Measures taken with regard to unsanitary conditions on vessels entering a port of Panama by means of Panama Canal waters will be coordinated with the Port Quarantine Office of the Government of Panama.

§ 61.126 Certificate of measure applied.

The medical officer in charge shall, upon request, issue free of charge to a carrier a certificate specifying the sanitary measures applied to a vessel, the parts thereof treated, the methods employed, and the reasons why the measures were applied.

Measures in Transit

§ 61.151 Vessels; general provisions.

The measures described in §§ 61.152 through 61.156 must be taken in transit with respect to vessels destined to enter Panama Canal waters.

§ 61.152 Vessels; sanitary inspection and corrective measures.

The master or a designated officer shall make a daily sanitary inspection of all compartments of the vessel normally accessible to passengers or crew. Immediate corrective measures shall be taken if evidence of vermin, rodents or unsanitary conditions is found.

§ 61.153 Vessels; entries in the official record.

A record of the conditions found a sanitary inspection under § 61.152 and the corrective measures taken shall be entered in an official record.

§ 61.154 Vessels; radio report of disease aboard.

(a) The master of a vessel destined to enter Panama Canal waters shall report promptly by radio to the medical officer of the Panama Canal Commission prior to entering the Panama Canal, and wherever practicable not less than four hours before the expected arrival of the ship, the occurrence or suspected arrival of the ship, the occurrence or suspected occurrence of any serious human or animal disease manifested by fever, diarrhea, skin rashes and other suspicious symptoms such as may indicate any of the following: Anthrax, chancroid, cholera, dengue, diphtheria, encephalitis, gonorrhea, granuloma inguinale, hemolytic streptococcal infections, infectious hepatitis, leprosy, lymphogranuloma venereum, malaria, measles, meningococcal meningitis, plague, poliomyelitis, relapsing fever, shigella dysentery, smallpox, syphilis, tuberculosis, typhoid fever, typhus, yellow fever, or any other diseases which may be added to the list of internationally communicable diseases as recognized by WHO in its International Health Regulations. A disease may also be deleted from this

list if it has been removed from the WHO regulations.

(b) The medical officer will notify the Port Quarantine Office of the Government of Panama as soon as information is received that one of the preceding diseases is present or suspected of being present on a ship entering the Panama Canal.

§ 61.155 Vessels; yellow fever.

(a) The following vessels shall be disinsected prior to their arrival in Panama Canal waters, and the master of the vessel shall certify to this effect on the maritime quarantine declaration presented to the medical officer upon arrival:

(1) An infected or suspected vessel as defined in § 61.228; or

(2) A vessel from an infected area; or,

(3) A vessel that has within 15 days left a port where the Adedes aegypti Index is reported as 1.0 or higher.

(b) The insecticide used and method of disinsecting shall be those prescribed by the medical officer in charge.

(c) If the disinsecting required under paragraph (a) of this section is not carried out or if the medical officer in charge finds live mosquitoes on board or otherwise determines that the vessel's own disinsecting was inadequate, the vessel shall be detained in quarantine at a mooring not less than 400 meters from shore until disinsected by communicable disease surveillance personnel, and persons other than such personnel shall not be allowed on board until disinsecting is completed.

(d) The quarantine officer of the Government of Panama will be informed about every individual vessel disinsected prior to docking in a port of Panama. The Quarantine Office will also receive complete information from the ship's required entry documents on all ships which have either transited the Panama Canal or docked at a port of Panama.

§ 61.156 Vessels; disinsecting.

Vessels required to be disinsected under § 61.155 shall be disinsected as follows:

(a) The insecticide used shall be an aerosol of a type approved by the medical officer in charge;

(b) The insecticide shall be dispensed in the amount to be determined by the medical officer in charge and released or sprayed throughout all accessible compartments;

(c) The ventilating system shall be stopped and all openings to the exterior kept closed while the insecticide is being released or sprayed for a period of at least 15 minutes thereafter.

Vessels Subject to Communicable Disease Surveillance Inspection

§ 61.171 General provisions.

(a) A vessel arriving in Panama Canal waters shall undergo communicable disease surveillance inspection prior to entry unless:

(1) In the current voyage the vessel has not touched at any port other than a port determined by WHO, the quarantine officer of the Government of Panama or the Communicable Disease Center of the United States Public Health Service to be in an area that is exempt from communicable disease surveillance; or

(2) In the current voyage the vessel has received pratique at a port of Panama or a port of the United States, and since receiving such pratique has met the requirements of paragraph (a)(1) of this section; or

(3) Pratique has been granted by a medical officer prior to the arrival of the vessel at the Panama Canal.

(b) A vessel otherwise exempt from inspection under the provision of paragraph (a) (1), (2), or (3) of this section shall undergo communicable disease inspection prior to entering the Panama Canal if the vessel—

(1) Has on board, or during the current voyage has had on board, a person infected or suspected of being infected with any serious human or animal disease manifested by fever, diarrhea, skin rashes or other suspicious symptoms;

(2) Arrives directly from a port where at the time of departure there was present or suspected of being present cholera, plague, smallpox, or yellow fever;

(3) Being exempt from inspection under the provisions of paragraph (a)(1) of this section, or arrival at the Panama Canal has on board a person who has been in a port or area which is not exempt from communicable disease surveillance within 14 days prior to such arrival; or,

(4) Being exempt from inspection under the provisions of paragraph (a) (1) or (3) of this section, on arrival at the Panama Canal has on board an animal or article that does not comply with the admission requirements contained in this part or prescribed by the Government of Panama.

(c) Notwithstanding the provisions of paragraph (a) (2) and (3) of this section, a vessel having received pratique at a port of Panama or a port of the United States—

(1) Shall comply with any conditions and carry out any additional measures specified in the pratique; and

(2) May be required to undergo communicable disease surveillance inspection if the medical officer in charge has reason to believe that the entry or departure of the vessel would be likely to cause the introduction of communicable disease.

§ 61.172 Exempt vessels subject to sanitary regulations.

A vessel which has been exempted from communicable disease surveillance inspection under § 61.171 shall nevertheless be subject to the provisions of §§ 61.241 through 61.244.

§ 61.173 Report of disease or rodent mortality on vessel during stay in port.

The master of a vessel which has entered the Panama Canal to dock in a port of Panama shall promptly report to the medical officer in charge before re-entering the Panama Canal the occurrence of the following on the vessel during its stay in port:

(a) A known or suspected case of communicable disease included in the list or description in § 61.154.

(b) Unusual mortality or evidence of disease among rodents.

General Requirements Upon Arrival at the Panama Canal

§ 61.191 Applicability.

The measures prescribed in §§ 61.192 through 61.201 shall be taken with respect to vessels which are subject to communicable disease surveillance inspections pursuant to § 61.171 and with respect to persons and things arriving on such vessels.

§ 61.192 Vessels; awaiting inspection.

(a) A vessel which must undergo communicable disease surveillance inspection prior to entry shall fly a yellow flag and, except as provided in paragraph (b) of this section, shall anchor in the prescribed anchorage and await inspection.

(b) If the vessel is to dock in a port of Panama, the medical officer, after reaching agreement with the port quarantine officer of the Government of Panama, may authorize the vessel to proceed to a point within the port to await further inspection.

(c) There will be no movement of any person or thing onto or from the vessel without the permission of the port quarantine officer of the Government of Panama pending communicable disease surveillance inspection by appropriate personnel.

§ 61.193 Maritime communicable disease surveillance declaration.

(a) Upon arrival of a vessel, her master shall complete and sign a

maritime communicable disease surveillance declaration on the Panama Canal Commission Communicable Disease Surveillance Declaration form. This form is also referred to as the Ship Information and Quarantine Declaration (SIQD). The SIQD shall also be signed by the ship's surgeon if one is carried. The signed form shall be delivered to the Commission's boarding officer when he boards the vessel. The original shall be retained in the Office of Admeasurement. Copies will be sent to the port quarantine officer of the Government of Panama and the Panamanian Ministry of Health. A copy shall be given to the master of the vessel as well.

(b) The master of a vessel and the ship's surgeon, if one is carried, shall furnish all information as to health conditions on board during the voyage which may be required by the medical officer or Chief, Occupational Health Division, and shall comply with the regulations in this subpart and with any directions or requirements of the Chief, Occupational Health Division, pursuant to the regulations in this subpart.

Cross Reference

Ship Information and Quarantine Declaration, § 101.10.

(Approved by the Office of Management and Budget under control number 3207–0001)

§ 61.194 Persons; restrictions on boarding and leaving vessels, or having contact with persons aboard.

Except with the permission of the medical officer or the port quarantine officer, no person other than the pilot may board a vessel subject to communicable disease surveillance inspection until after it has been inspected by the medical officer or port quarantine officer and granted pratique. A person boarding the vessel shall be subject to the same restrictions as those imposed on the persons on the vessel. A person may not leave or be permitted to leave a vessel subject to communicable disease surveillance inspection until after it has been inspected by the medical officer or port quarantine officer and granted pratique, except with the permission of the medical officer or port quarantine officer.

§ 61.195 Communicable disease surveillance inspection and controls.

(a) Communicable disease surveillance inspection of vessels may include, but is not limited to, the following:

(1) Inspection of the vessel, its cargo, manifests, and other papers to ascertain the sanitary history and condition of the vessel; and

(2) Examination of the persons aboard the vessel, their personal effects and records to determine the presence, or risk of introduction, of quarantinable and other communicable diseases.

(b) The medical officer in charge may require a vessel to remain under communicable disease surveillance controls until the completion of the measures authorized in this subpart which in his judgment are necessary to prevent the introduction or spread of a quarantinable or other communicable disease.

§ 61.196 Persons; examination.

If a vessel that is subject to communicable disease surveillance inspection carries a ship surgeon, the examination of persons on board may be limited to those designated by the port quarantine officer of the Government of Panama.

§ 61.197 Vessels; persons and things; communicable diseases other than quarantinable diseases.

(a) Whenever the medical officer has reason to believe that an arriving vessel or article or thing on board is or may be infected or contaminated with any of the communicable diseases listed in § 61.154 of this chapter, he may disinsect, disinfect, disinfest, fumigate or take such other related measures respecting the vessel, or article or thing aboard, or any part thereof, as he considers necessary to prevent the introduction, transmission, or spread of such communicable diseases. If the vessel is going to enter a port of Panama the medical officer will communicate his findings to the Quarantine Office of the Government of Panama.

(b) Whenever the medical officer has reason to believe that an arriving person is suffering or has been exposed to infection from any of the communicable diseases listed in § 61.154 of this chapter, he may place the person in isolation or under surveillance and may disinfect or disinfest his person, clothing or baggage as he considers necessary to prevent the introduction, transmission or spread of such communicable diseases. If the vessel is to enter a port of Panama the medical officer will coordinate his actions with the Quarantine Office of the Government of Panama.

§ 61.198 Persons; isolation.

Persons held under isolation or surveilliance pursuant to these provisions shall not have contact with other persons except by permission of the medical officer.

§ 61.199 Furnishing of fresh crew.

After a vessel has been cleared by the medical officer, it may be furnished with a fresh crew. Crew members boarding the vessel must clear the Quarantine, Immigration and Customs offices of the Government of Panama.

§ 61.200 Disinfection of cargo

When the freight manifest of a vessel lists articles which may require disinfection under the provisions of this subpart, the medical officer shall:

(1) Request veterinary assistance to inspect and disinfect them on board if the vessel is for transit only.

(2) Notify the port quarantine officer of the Government of Panama if the vessel will enter a port of Panama so that the article can be disinfected or kept separate from other freight in the port pending separate disposition.

§ 61.201 Exemption for mails.

Except to the extent that mail contains any of the foods or beverages specified in § 61.222(d) which the medical officer has reason to believe comes from a cholera-infected area, or any dog or cat subject to communicable disease surveillance restrictions under §§ 61.281, this subpart shall not render liable to detention, disinfection or destruction any mail conveyed under the authority of the postal administration of the United States or of any other Government.

Particular Requirements Upon Arrival at the Panama Canal

§ 61.221 Applicability.

In addition to the requirements of §§ 61.192 through 61.201, the particular requirements prescribed in §§ 61.222 through 61.229 for persons, vessels, animals, and cargo shall be observed with respect to vessels which are subject to communicable disease surveillance inspection under §§ 61.171. The particular requirements of § 61.226 shall be observed irrespective of whether the vessels are subject to communicable disease surveillance inspection.

§ 61.222 Cholera; vessels and things.

(a) For the purpose of applying sanitary and quarantine measures against the spread of cholera:

(1) An infected vessel means a vessel which has on board on arrival a case of cholera-like diarrhea or on which a case of cholera has occurred within 5 days prior to arrival.

(2) A suspected vessel means a vessel which has had on board during the voyage a severe case of cholera-like diarrhea more than 5 days prior to arrival.

(b) An infected or suspected vessel shall be detained in quarantine as may

be necessary for the effective accomplishment of the applicable sanitary measure prescribed in this subpart.

(c) Personal effects and baggage of an infected person or suspect and any part of the infected or suspected vessel considered to be contaminated shall be disinfected. Bedding or linen, human ejecta, bilge water, waste matter or water, and matter considered to be contaminated may not be unloaded or discharged until it has been disinfected by the quarantine officer of the Government of Panama.

(d) On arrival of an infected or suspected vessel, or a vessel arriving from an infected area, the medical officer may prohibit entrance into Panama Canal waters of such vessel until arrangements have been made with the quarantine officer of the Government of Panama at the ports of Panama for evaluation of all fish, shellfish, fruit or vegetables to be consumed uncooked unless such food or beverages are in sealed containers. The quarantine officer of the port of Panama will also evaluate any such food or beverages that form part of the ship's storage.

(e) If the medical officer considers the water supply of a cholera infected or suspected vessel to be contaminated, he shall require the disinfection and removal of any water carried on board and if necessary the disinfection of the water system and of the water containers.

§ 61.223 Cholera; vessels; persons.

(a) Persons ill from cholera shall be isolated and immediate arrangements shall be made with the Quarantine Office of the Government of Panama for treatment of the person.

(b) On arrival of an infected vessel the medical officer shall contact the port quarantine officer of the Government of Panama to arrange placement under surveillance of any person disembarking who produces a valid certificate of vaccination against cholera and isolation of all other inadequately vaccinated persons disembarking.

(c) On arrival of a suspected vessel the medical officer shall contact the port quarantine officer of the Government of Panama to arrange placement under surveillance of any person disembarking.

(d) A person who, within 5 days prior to arrival, has departed from a cholera infected area or arrives on a vessel which has departed from such an area within that time may be placed under surveillance if he has a valid certificate of vaccination against cholera or may be placed in isolation if he does not have such a certificate. The medical officer shall contact the quarantine officer of the Government of Panama if a person under isolation or surveillance wishes to disembark in a port of Panama. The period of isolation or surveillance shall be reckoned from the date of departure of the person, or the vessel, from the infected area.

(e) A person who has departed from an infected area within 5 days prior to arrival and who has symptoms indicative of cholera may be required to submit to a stool examination.

§ 61.224 Plague; vessels.

(a) For the purpose of applying sanitary and quarantine measures against the spread of plague:

(1) An infected vessel means a vessel which has on board on arrival a case of human plague, or a plague infected rodent. A vessel shall also be regarded as infected if a case of plague develops on board in a person more than 6 days after his embarkation.

(2) A suspected vessel means (i) a vessel which, not having a case of human plague on board on arrival, has had on board such a case developed by the person within 6 days of his embarkation, or (ii) a vessel on which there is evidence of abnormal mortality of rodents on board, the cause of which is not known on arrival.

(b) An infected or suspected vessel shall be detained in quarantine as may be necessary for the effective accomplishment of the applicable sanitary measures prescribed in this subpart.

(c) On arrival of a vessel which has rodent plague on board the medical officer shall contact the port quarantine officer of the Government of Panama to arrange deratting of the vessel. A vessel which has entered a Panamanian port in or adjacent to Panama Canal waters will not be allowed to re-enter Panama Canal waters until the following provisions have been met during such deratting:

(1) The deratting shall be carried out as soon as the holds have been emptied.

(2) One or more preliminary derattings of a vessel with the cargo in situ, or during its unloading, may be carried out to prevent the escape of infected rodents.

§ 61.225 Plaque; vessels; persons; things.

(a) Persons ill from plague shall be isolated until arrangements are made with the quarantine office of the Government of Panama for quarantine and treatment of the person.

(b) On arrival of an infected or suspected vessel the medical officer may:

(1) Require any suspect on board to be disinsected and may place him under surveillance, the period of surveillance being reckoned from the date of arrival of the vessel;

(2) Require the disinsecting and, if necessary, disinfection of the baggage of any infected person or suspect and of any other article such as used bedding or linen, and any part of the vessel which the medical officer considers to be contaminated.

(c) On the arrival of a healthy vessel which has come from a plague-infected area the medical officer may—

(1) Arrange placement under surveillance by the quarantine officer of the Government of Panama of any suspect who disembarks.

(2) Require the deratting of the vessel at the anchorage in exceptional circumstances. In such case, the master shall be informed in writing of the reasons for the action.

§ 61.226 Smallpox; persons, general.

All persons arriving from an area designed by the World Health Organization as a smallpox-infected country within 14 days prior to arrival may be required to comply with the following smallpox prevention measures:

(a) If there is not satisfactory evidence to the medical officer of successful vaccination or of a revaccination, within 3 years prior to arrival or evidence of a previous attack of smallpox, the person will be required to be vaccinated. If he refuses vaccination, he shall be isolated by the medical officer, if aboard a transiting vessel, or isolated by arrangement with the quarantine office of the Government of Panama, if aboard a vessel entering a port of Panama.

(b) The medical officer may arrange for the quarantine officer of the Government of Panama to place under surveillance those persons subject to vaccination requirements.

§ 61.227 Smallpox; infected vessels; persons.

(a) For the purpose of applying sanitary and quarantine measures against the spread of smallpox, an infected vessel means a vessel which on arrival has a case of smallpox aboard or has had a case of smallpox on board during the voyage.

(b) On arrival of an infected vessel, the medical officer shall detain the vessel in quarantine as may be necessary for the effective accomplishment of the following measures:

(1) The quarantine office of the Government of Panama shall be notified

of the arrival of an infected vessel so that appropriate quarantine surveillance and isolation procedures as listed under subparagraphs (2) through (6) of this paragraph may be coordinated.

(2) The medical officer may arrange for the quarantine officer of the Government of Panama to place under surveillance any person aboard the vessel.

(3) Vaccination shall be offered to any person considered by the medical officer not to be sufficiently protected against smallpox.

(4) The medical officer, taking into consideration the danger of infection, will arrange with the quarantine office of the Government of Panama isolation or surveillance of any person planning to disembark.

(5) The baggage of any infected person shall be disinfected.

(6) Any other baggage or article, or any part of the ship which the medical officer considers to be contaminated shall be disinfected.

§ 61.228 Yellow fever; vessels; classification.

For the purpose of applying sanitary and quarantine measures against the spread of yellow fever:

(a) An infected vessel means a vessel which has on board on arrival or which during its voyage had on board a case of yellow fever.

(b) A suspected vessel means a vessel which has left a yellow fever-infected area within 6 days prior to arrival or which arriving within 30 days after leaving such area has Aedes aegypti mosquitoes on board.

§ 61.229 Yellow fever; vessels; persons.

(a) On arrival of an infected vessel the medical officer shall contact the quarantine officer of the Government of Panama to coordinate removal and isolation of all persons ill with yellow fever until they are no longer infectious.

(b) The medical officer will inform the quarantine office of the Government of Panama of the arrival of any person from an infected area or planning to disembark from an infected or suspected vessel who does not produce a valid certificate of vaccination against yellow fever.

Sanitary Inspection: Rodent and Vermin Control

§ 61.241 General provisions.

(a) Vessels entering Panama Canal waters are subject to sanitary inspection in accordance with §§ 61.241 through 61.244 to ascertain whether there exists rodent, vermin, or insect infestation, contaminated food or water, or other unsanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of communicable disease.

(b) The Chief, Occupational Health Division of the Panama Canal Commission may require such measures with respect to such vessels as are deemed necessary to:

(1) Carry out the Commission's responsibilities as set forth in the Panama Canal Treaty of 1977 in regards to preserving the health of the employees of the Commission and the sanitation of Panama Canal areas and waters;

(2) Comply with the recommendations of the World Health Organization;

(3) Effect those measures deemed necessary by the Government of Panama;

(4) Prevent the entrance into Panama or the international spread of other communicable diseases designated as a serious threat.

§ 61.242 Disinsecting and disinfection; vessels and persons.

Except as otherwise provided in this subpart—

(a) Vessels may be disinfected on arrival if the medical officer considers disinfestation necessary to prevent the spread of infection or for the destruction of insects and vermin capable of transmitting communicable disease.

(b) The person, effects and baggage of any vermin-infested person arriving aboard a vessel shall be disinsected and, if necessary, in the judgment of the medical officer, disinfected.

§ 61.243 Deratting certificates; deratting exemption certificates.

(a) If a valid Deratting Certificate or Deratting Exemption Certificate is not produced with respect to any arriving vessel—

(1) If the vessel will only transit the Panama Canal and the medical officer is satisfied that the vessel is free of rodents or is kept in such a condition that the number of rodents on board is negligible, the medical officer may clear if for transit. If it is determined that a deratting certificate shall not be issued with respect to the vessel, the medical officer shall notify the Commission's Marine Traffic Control Center and the Port Quarantine Office of the Government of Panama.

(2) If the vessel will stop in the ports of Balboa or Cristobal, the medical officer will report his findings and recommendations to the Port Quarantine Office of the Government of Panama.

§ 61.244 Vessels in traffic between United States and Panama.

Notwithstanding any other provision of this subpart, vessels engaged in trade between ports of the United States or Panama on entering Panama Canal waters shall be subject to sanitary inspection and measures as described in § 61.241 through 61.243, when arriving from a port infected or suspected of being infected with a quarantinable disease or when illness on board indicates unsatisfactory sanitary conditions.

Pratique: Vessels

§ 61.261 General requirements.

Vessels subject to communicable disease surveillance inspection under the provisions of §§ 61.171 may not enter Panama Canal waters unless a certificate of free pratique or provisional pratique has been granted to the master. When it is not feasible to comply with the requirements for free or provisional pratique, the vessel is at liberty to return to sea.

§ 61.262 Free pratique.

The granting of free pratique signifies that the vessel and its master may enter Panama Canal waters.

§ 61.263 Provisional pratique

(a) Provisional pratique signifies that the vessel may proceed, but that additional measures regarding the sanitary condition of the vessel, as specified, must be taken in connection with entering or proceeding through the Canal. Free pratique shall be issued after the additional measures have been completed.

(b) The medical officer may notify the next port of such additional measures as may be indicated for a particular vessel to proceed there. The medical officer in charge may contact the quarantine stations at the next port of call regarding additional measures indicated.

§ 61.264 Radio pratique.

The medical officer in charge may grant pratique to a vessel upon the basis of information regarding the vessel, its cargo and persons aboard, received prior to arrival of the vessel, when in his judgment, and in accordance with general standards set by the Chief, Occupational Health Division of the Commission and the Ministry of Health of the Government of Panama, the entry of the vessel will not result in the introduction, transmission or spread of communicable diseases.

Importation of Dogs and Cats

§ 61.281 Quarantine of dogs and cats.

The owner or person in charge of any dog or cat entering the Panama Canal area from outside the Republic of Panama shall make arrangements with

the appropriate veterinary authorities for entry of the animal.

Dated: October 23, 1985.

D. P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85-28032 Filed 11-25-85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 1809; A-7-FRL-2930-2]

Approval and Promulgation of Missouri State Implementation Plan (SIP) for Visibility New Source Review and Monitoring Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking (PRM).

SUMMARY: In this action, EPA proposes to approve the visibility new source review and visibility monitoring portions of the Missouri SIP. The State submitted these portions of their visibility plan on May 3, 1985. Missouri needs a visibility SIP because there are two areas in Missouri where EPA has determined that visibility is important and should be protected.

DATE: Comments on this proposal must be received by December 26, 1985.

ADDRESSES: Written comments should be sent to Dewayne E. Durst at EPA Region VII at the address listed below. Copies of the materials submitted by Missouri may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101

Missouri Department of Natural Resources, Air Pollution Control Program, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101.

Written comments should be sent to: Dewayne E. Durst, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at the above address or telepone (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION:

Backgound

Section 169A of the Clean Air Act requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks. There are two wilderness areas in Missouri: Mingo National Wildlife Refuge and Hercules Glades, for which visibility SIPs are required.

On December 2, 1980, EPA promulgated regulations to implement Section 169A 45 FR 80084. There were 36 states which contained areas where visibility SIPs were needed. Numerous parties sought judicial review of the visibility regulations in the United States Court of Appeals for the District of Columbia Circuit. The D.C. Circuit stayed the litigation in March 1981, pending EPA action on administrative petitions for reconsideration of the regulations. Because of the litigation and petitions, few states started work on visibility SIPs. In 1981, Missouri prepared a draft visibility SIP for Hercules Glades and Mingo, but suspended work on the draft because of resource constraints and the uncertainty caused by the litigation and petitions.

In December 1982, the Environmental Defense Fund, et al. (EDF) filed a citizen suit in the United States District Court for the northen district of California, alleging that EPA had failed to perform a nondiscretionary duty to promulgate visibility SIPs for 35 states which had not adopted their own by September 2, 1981. The EPA and EDF negotiated a settlement agreement which contained a schedule for promulgating visibility SIPs for states where none had been approved. The schedule was approved by the Court on April 20, 1984.

The Court-approved schedule requires EPA to promulgate visibility SIPs in two parts. In the first part, EPA is to promulgate a monitoring strategy meeting the requirements of 40 CFR 51.305 and visibility new source review meeting the requirements of 40 CFR 51.307. The details and schedule for promulgating the remaining parts of the SIPs are described at 49 FR 20647 (May 16, 1984).

On October 23, 1984, at 49 FR 42670, EPA proposed to disapprove the monitoring and new source review portions of the Missouri visibility SIP. The State was given an opportunity to avoid Federal promulgation of these regulations if they submitted SIP revisions to EPA by May 6, 1985, that satisfy the requirements of §§ 51.305 and 51.307.

Missouri Visibility SIP

Missouri developed a plan for visibility new source review and monitoring for the Class I areas in their State and after proper notice and public hearing, submitted the plan to EPA on May 3, 1985. EPA has evaluated these portions of Missouri's visibility SIP and based on that evaluation, has concluded that they meet the requirements of 40 CFR 51.305 for visibility monitoring and 40 CFR 51.307 for visibility new source review. This notice proposes to approve these sections of Missouri's SIP and requests public comment on the proposed approval.

To meet the visibility monitoring requirements of 40 CFR 51.305, a state must develop a visibility monitoring strategy that assesses visibility by "visual observation or other appropriate techniques". The state must also consider "advances in visibility monitoring technology and any guidance provided by EPA". The SIP must provide for consideration of available visibility data when implementing all sections of the visibility protection program.

The uses for the visibility data include determining the potential impact of new sources, identifying sources which are causing visibility impairment, developing strategies for correcting the impairment, and determining if progress is made toward meeting the national visibility goal. Visibility monitoring to meet the above data needs may be broken into background data, which represent a rather large area over a long period of time, and documentation of individual visibility impairment which would be site specific for short time periods. The monitoring strategy must be designed to support other visibility plan requirements and thus, the monitoring strategy for a particular state should be tailored to the visibility areas in that state and actual impairment that exists in those areas. In order to provide knowledge of the conditions and requirements concerning visibility in the Class I areas, the state should coordinate their activities closely with the Federal Land Managers (FLMs).

The monitoring SIP should describe the data collection methods or monitoring equipment to be used. These methods should be appropriate to meet the objectives of the monitoring strategy. The states need not include the details of the monitoring program in their SIP because they may wish to change these details as the visibility plan is implemented. The details can be described in a separate document or appendix including the following: (a) Monitoring sites, (b) equipment or data collection techniques, (c) quality assurance procedures, (d) monitoring frequency, (e) availability of data, and (f) implementation schedule.

Missouri has worked closely with the FLMs or their representatives in

developing the monitoring programs for Hercules Glades and Mingo Wildlife Areas. This included consultation with the FLMs in 1980 during the time that Missouri was preparing the original draft of their visibility plan, as well as during 1985 when the final version of their plan was developed. The FLMs have indicated in writing that there is no existing impairment at either of the Class I areas in Missouri. This reduces the need for monitoring of existing impairment and eliminates the need for monitoring to develop strategies to control impairment. There is still need for a moderate monitoring program for detecting future impairment from existing sources which have not caused a problem in the past.

There are no existing visibility monitoring sites located in the Missouri Class I areas. There are no plans for locating instrument-equipped stations in Missouri in the near future. The State has indicated in their visibility SIP that they plan to make use of applicable background data collected by monitors in the Federal Monitoring Plan. There is a National Park Service visibility monitoring site in Arkansas on the Buffalo River, about 90 kilometers (65 miles) southeast of the Hercules Glades wilderness area in Missouri.

Missouri did not include details of their monitoring plan in the SIP but have committed to provide this information as it is developed. The responsible Federal Land Managers for the Class I areas in Missouri have agreed in writing to participate in limited visibility monitoring programs for their respective areas. Initially, this will consist of visual observations. Details of the monitoring activities will be contained in a written agreement between the Land Managers and the Department of Natural Resources. These monitoring programs will be directed at collecting both background and visibility impairment data. Missouri's new source review regulations also allow the State to require major source review regulations also allow the State to require major sources to monitor visibility in any Class I area.

To meet the visibility new source review requirements of 40 CFR 51.307, states must either incorporate certain provisions into their existing approved regulations or accept delegation of Federal regulations. For states with approved Prevention of Significant Deterioration (PDS) regulations, as in Missouri, the state's PSD regulations must contain the following provisions for major statutory sources:

1. The state must notify the FLM in writing within 30 days of receiving a permit application or advance notification of application from a proposed source that may impact a visibility area.

2. The notification must take place at least 60 days prior to the public hearing on the application and must contain an analysis of the potential impact of the proposed source on visibility.

3. The state must consider the FLM's analysis concerning visibility impairment if it is received within 30 days of the notification.

4. If the state does not agree with adverse comments from the FLM, they must provide an explanation in the notice of public hearing or give notice of where the explanation can be obtained.

5. The state must have ability to require new sources to monitor for visibility in or around visibility protection areas.

For states with approved new source review rules pertaining to nonattainment areas, the rules must include provisions for requiring a visibility impact analysis for any major stationary source or modification located in the nonattainment area and impacting a visibility protection area. Missouri's SIP is presently approved for new source review in nonattainment areas.

The specific revisions which are needed in that section of their SIP are as follows:

1. A visibility impact analysis must be provided in order to construct a major source in a nonattainment area which could impact a visibility protection area.

2. The source's emissions must be consistent with the national visibility goal.

3. All the requirements listed above which apply to sources in PSD or attainment areas must also apply to sources in nonattainment areas.

Missouri has incorporated all of the above requirements in their rules 10 CSR 10-6.060, Permits Required, and 10 CFR 10-6.020, Definitions.

Action: EPA proposes to approve Missouri's SIP as meeting the requirements of 40 CFR 51.305 and 40 CFR 51.307.

This State submission constitutes a proposed revision to the SIP. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of Section 110 of the Clean Air Act and of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporated by reference.

Authority: 42 U.S.C. 7401—7442.

Dated: October 8, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85-28160 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-8-FR-2930-1]

Approval and Promulgation of State Implementation Plans, Revisions to Regulation No. 1 of the Colorado Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve revisions to the Colorado Air Quality Control Commission Regulation No. 1 (Emission Control Regulations for Particulates, Smokes and Sulfur Oxides) of the Colorado SIP which were submitted by the Governor on June 22, 1982; on December 6, 1982; and on March 23, 1983. A supplemental submittal dated August 5, 1982 withdrew certain portions of the June 22, 1982 submittal, as these were not required by Part C or Part D of the Clean Air Act. There are also a number of minor revisions, additions and deletions to definitions in the "Common Provisions" for the Colorado Air Quality Regulations. The principal reason for this revision was to require Reasonably Available Control Technology (RACT) for casthouse operations and quenching towers at an existing iron and steel plants. However, subsequent to the State's submittal of this revision, these facilities were permanently closed. EPA, therefore, considers the casthouse and quenching tower submission as surplus and we are proposing to take no action on that portion of the submittal. This action also addresses changes in the limitations for wigwam waste-wood burners, which revision maintains the opacity limit and improves the operation

and maintenance (O&M) requirements for these burners. Changes were also made to the fugitive dust regulation to conform it to a State judicial decision.

DATE: Comments must be received on or before December 26, 1985.

ADDRESSES: Comments may be mailed to Robert R. DeSpain, Chief, Air Programs Branch, EPA Region VIII, 999 18th Street, Denver, Colorado 80202-2413.

Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Denver, Colorado 80202-2413.

FOR FURTHER INFORMATION CONTACT: Steve Frey, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202-2413, (303) 293-1768.

SUPPLEMENTARY INFORMATION: The principal issue relating to this action was the time requirement for installation of Reasonably Available Control Technology (RACT) on the four casthouses located at the CF&I steel plant in Pueblo, Colorado. At the time the SIP proposal was submitted by the Governor, the Pueblo core area was designated as nonattainment for total suspended particulates (TSP). The proposed schedule for implementation of RACT for the casthouses could have allowed the source to operate them without RACT in an area that would not have attained the National Ambient Air Quality Standards (NAAQS) for TSP by December 31, 1982.

Before EPA acted on this revision, CF&I announced the permanent closure of a number of facilities at the plant, including the coke ovens, blast-furnaces and associated casthouses, and the quenching towers. After the closure was formalized, EPA took action on an existing request by the State to redesignate the Pueblo area to attainment for the primary TSP standard. This redesignation became effective June 15, 1984. Now that the facilities in question have been permanently shutdown, the RACT requirement is no longer necessary. If these facilities should return to operation in the future, they would be subject to new source review and permitting. This review would assure that there would be no exceedance of the NAAQS.

These actions also modify regulations for wigwam waste-wood burners (wigwam burners). Previously, Regulation No. 4 contained the emission control regulations for existing wigwam burners. The opacity limitation in that regulation was 40%. Regulation No. 4 expired on January 1, 1978. This revision proposes to reinstate the 40% opacity limitation for these sources into Regulation No. 1, and adds operations and maintenance (O&M) requirements to promote improved operation of the wigwam burners. EPA believes that the 40% opacity limitation together with the new O&M requirements will result in lower actual emissions from these burners. This action, therefore, should have no adverse impact on the attainment status for TSP for the areas where existing wigwam burners are located.

The submittal dated June 22, 1982, requested approval of requirements for fuel sampling or continuous emission monitoring (CEM) of sulfur dioxide on any fossil fuel fired steam generator with greater than 250 million BTU per hour heat input, regardless of whether the source had installed SO_2 removal equipment. The Colorado Air Quality Control Act provides that to the extent a state regulation is not required by Part C or Part D of the Federal Clean Air Act, it shall not be a part of the State Implementation Plan (Section 25-7-105(8) C.R.S. 1973 (1981 Supp.)). Since EPA required CEM on only those sources exceeding 250 million BTU per hour heat input which had indeed installed SO_2 removal equipment, the State modified its original requirement via the August 5, 1982 submittal to be consistent with EPA requirements. For boilers under 250 million BTU per hour heat input, the CEM requirement does not apply. EPA is proposing to approve the Colorado CEM requirements as modified because they meet EPA's requirements as specified in 40 CFR 51.19.

The State has modified its fugitive dust regulation to require sources of fugitive dust to develop a plan ". . . to minimize fugitive dust into the atmosphere through the use of all available practical methods which are technologically feasible and economically reasonable and which reduce, prevent and control emissions so as to facilitate the maximum practical degree of air purity in every portion of the State." The State's existing SIP limit of 20% opacity and no visible off property transport had been overturned as being too vague by the State courts. In response to the court decision, the State developed this control scheme so that the limits for each source could be tailored to that specific type of source and thereby avoid the vagueness question. The 20% opacity and no visible off property transport provisions have been incorporated into the rules as guidelines that would trigger the need for a better control plan if they were exceeded.

Although the control scheme does not require all sources to immediately submit a plan, the State program does provide ample opportunity to require a plan from a source that causes a nuisance or is found to exceed either the 20% opacity or the no visible off property transport guidelines during routine inspection. Major sources are inspected by the State each year and minor sources are inspected every three years. The State also routinely responds to all complaints by conducting an inspection.

EPA believes that this rule will require the application of RACT to fugitive dust sources in both attainment and nonattainment areas. However, it is possible that a plan could be approved by the State which may not meet the requirement for application of RACT in the nonattainment area. If such a plan was approved by the State, EPA would not be able to enforce a RACT requirement because the source would be complying with the approved SIP. To ensure that the State requires RACT for fugitive dust sources in the nonattainment area, EPA is proposing to approve the State submittal as a framework requiring fugitive dust RACT control. This framework will require that the State submit each fugitive dust control plan in nonattainment areas for approval as a SIP revision. In this way EPA can assure that each plan requires the application of RACT in the nonattainment area.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended. These revisions are being proposed pursuant to sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Authority: 42 U.S.C. 7401-7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, and Sulfur oxides.

Dated: September 30, 1985.
John G. Welles,
Regional Administrator.
[FR Doc. 85-28161 Filed 11-25-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2845/3E2893/3E2930/P380; FRL-2931-1]

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the herbicide glyphosate and its metabolite in or on certain crop groups. The proposed regulation to establish maximum permissible levels for residues of glyphosate in or on the crop groups was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 3E2845/3E2893/3E2930/P380], must be received on or before December 11, 1985.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted the following pesticide petitions (PP) to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the named Agricultural Experiment Stations. The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide glyphosate, (*N*-(phosphonomethyl)-glycine), and its metabolite aminomethylphosphonic acid in or on certain crop groups:

1. *PP 3E2845* on behalf of the Agricultural Experiment Stations of Arkansas, Florida, Georgia, Louisiana, Michigan, Minnesota, Missouri, Puerto Rico, Texas, and Vermont, and the United States Department of Agriculture for the crop group cucurbit vegetables at 0.5 part per million (ppm).

2. *PP 3E2893* on behalf of the Agricultural Experiment Stations of Arkansas, California, Florida, Louisiana, Maryland, Michigan, Tennessee, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Texas, Kentucky, Virginia, and Washington, and the U.S. Department of Agriculture for the crop group fruiting vegetables (except cucurbits) including tomatoes, peppers and eggplants at 0.5 ppm. The petition was later amended to propose a tolerance for the crop group at 0.1 ppm.

3. *PP 3E2930* on behalf of the Agricultural Experiment Stations of Alaska, Arkansas, Connecticut, Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Virginia, and West Virginia, and the U.S. Department of Agriculture for the crop group small fruits and berries at 0.2 ppm.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include a 26-month rat feeding study with a no-observed-effect level (NOEL) of 31 milligrams (mg)/kilogram (kg)/day (highest dose tested) and no observed oncogenic effects under the conditions of the study; a 3-generation rat reproduction study with a NOEL of 10 mg/kg/day; a rat teratology study which was negative for teratogenic effects at 3,500 mg/kg/day and a fetotoxic NOEL of 1,000 mg/kg/day; a rabbit teratology study, negative at 350 mg/kg/day with a fetotoxic NOEL of 350 mg/kg/day; a rec-assay (*B. subtilis*) which was not mutagenic up to 2,000 micrograms of test material per disk; an Ames test with negative results for all four strains of *Salmonella* tested; a reverse mutation study which was negative for mutagenicity; and a mouse dominant lethal assay, negative at 2,000 mg/kg.

A 2-year chronic feeding/oncogenicity study in CD-1 mice has been completed and reviewed by the Agency. Feeding levels in this study were 1,000, 5,000 and 30,000 ppm (50, 250 and 1,500 mg/kg), respectively. The NOEL for chronic effects has been established at 5,000 ppm. The Agency is concerned with the presence of renal tubule adenomas in male mice in this study. Because these renal tubule adenomas are small and might not be detected by the usual pathological procedures, the Agency has requested additional sectioning of new blocks of male mouse kidneys from the study to provide data for an oncogenic determination. When these data are available, the Agency will be able to assess more fully the oncogenic potential of glyphosate in CD-1 male mice.

In the interim, the Agency considers the evidence for oncogenicity to be extremely limited and, based on available data, does not expect any significant risk from the dietary level of glyphosate to which humans are likely to be exposed from the proposed and established uses of glyphosate.

The acceptable daily intake (ADI), based on the rat reproduction study (NOEL of 10 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.1 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 6.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 1.3686 mg/day; the combined current actions will increase the TMRC by 0.01953 mg/day (1.4 percent). Published tolerances utilize 22.81 percent of the ADI; the current action will utilize an additional 0.33 percent. Tolerances have previously been established for cucurbits and fruiting vegetables at 0.1 ppm resulting from the use of irrigation water

containing residues at 0.5 ppm following applications on or around aquatic sites.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using a photometric detector, is available for enforcement purposes. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the raw agricultural commodities for which the tolerances are being established. There are presently no actions pending against the continued registration of this chemical.

Based on the data information considered, and the fact that currently established tolerances for meat and milk are adequate to cover any residues resulting from use as animal feed, the Agency concludes that the tolerances proposed would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, an Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedures Act [5 U.S.C. 553(d)(3)], the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means for control of emerged annual and perennial weeds now prevalent in the listed crops.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2845/3E2893/3E2930/P380]. All written comments filed in the response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a subtantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.364 is amended by adding, and alphabetically inserting, the following crop groups to paragraph (a) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Fruits, small, and berries group	0.2
* * * * *	
Vegetables, cucurbit group	0.5
Vegetables, fruiting (except cucurbits) group	0.1
* * * * *	

[FR Doc. 85-28317 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 281

[Docket No. R-100]

Extension of Deadline for Comments

AGENCY: Maritime Administration, DOT.

ACTION: Proposed rule; extension of comment peirod.

SUMMARY: On October 7, 1985, a Notice of proposed rulemaking to eliminate restrictions on non-subsidized voyages by subsidized liner operators by amending 46 CFR Part 281 to revoke §§ 281.11 through 281.17 was published in the **Federal Register** (50 FR 40876). Comments on the proposed rulemaking were due by November 21, 1985.

Sea-Land Service, Inc. has requested additional time to file comments, so that it may have an adequate opportunity to review documents in has requested from MARAD. Further, other commenters have requested additional time to file comments. We will grant their requests.

DATES: The deadline for submitting comments concerning this proposal is extended to 5:00 p.m. on December 5, 1985.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Fitzgeral, Director, Office of Trade Studies and Subsidy Contracts, Maritime Administration, Department of Transportation, Washington, D.C. 20590. Telephone: (202) 382-0374.

(Catalog of Federal Domestic Assistance program No. 20.804 Operating-Differential Subsidies).

By order of the Maritime Administrator.

Date: November 21, 1985.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 85-28102 Filed 11-21-85; 1:22 pm]

BILLING CODE 4910-81-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Cupressus abramsiana (Santa Cruz cypress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening the comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period will be reopened on the proposed determination of endangered status for *Cupressus abramsiana* (Santa Cruz cypress). The Act requires that this proposal be advertised in a paper of general circulation. In order to accommodate this provision, the comment period is reopened. The reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened November 26, 1985. Comments from all interested parties must be received by January 27, 1986. Public hearing requests must be received by January 10, 1986.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 NE Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Cupressus abramsiana (Santa Cruz cypress) occurs in groves on private and county land in the Santa Cruz Mountains, Santa Cruz and San Mateo Counties, California. Portions of each have been destroyed or are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that maintains the cypress groves. One population also faces a potential threat from oil and gas drilling.

The Act requires that this proposal be advertised in a paper of general circulation. In order to accommodate this provision, the comment period is reopened. The comment period on the proposal originally closed on November 12, 1985. Written comments may now be submitted on this proposal until January 27, 1986, to the Service office in the Addresses section. Public hearing requests must be received by January 10, 1986.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 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).

List of Subjects in 50 CFR Part 17

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

Dated: November 18, 1985.

Jerry R. Van Meter,

Acting Regional Director.

[FR Doc. 85-28120 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Eriogonum Ovalifolium var. Williamsiae (Steamboat Buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening the comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period will be reopened on the proposed determination of endangered status for *Eriogonum Ovalifolium* var. *Williamsiae* (Steamboat buckwheat). The Act requires that this proposal be advertised in a paper of general circulation. In order to accommodate this provision, the comment period is reopened. The reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopend November 26, 1985. Comments from all interested parties must be received January 27, 1986. Public hearing requests must be received by January 10, 1986.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Eriogonum ovalifolium var. *Williamsiae* (Steamboat buckwheat) is known from one site at Steamboat Hot Springs, Washoe County, Nevada, where it grows in several colonies scattered over approximately 100 acres. This species is vulnerable to habitat alteration that may be caused by the potential threats of drilling for geothermal development, recreational and commercial development, and mining activities near where it occurs. It is presently detrimentally affected by offroad vehicle use, dumping of refuse, and alterations to moisture patterns.

The Act requires that this proposal be advertised in a paper of general circulation. In order to accommodate this provision the comment period is reopened. The comment period on the proposal originally closed on November 12, 1985. Written comments may now be submitted on this proposal until January 27, 1986, to the Service office in the Addresses section. Public hearing requests must be received by January 10, 1986.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 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).

List of Subjects in 50 CFR Part 17

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

Dated: November 18, 1985.

Jerry R. Van Meter,

Acting Regional Director.

[FR Doc. 85-28121 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for the Giant Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of endangered status for the giant kangaroo rat and that the comment period on this proposal is reopened. The giant kangaroo rat is found only in south-central California. Mainly because of habitat loss, this species now occupies only about 6 percent of its original range. It is

jeopardized by the usurpation of native grasslands for agricultural and other purposes, and by the use of rodenticides. The hearing and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened November 26, 1985. The public hearing will be held from 7:00 to 9:00 p.m., on Monday, December 16, 1985, in Bakersfield, California. The comment period, which originally closed on October 15, 1985, now closes December 31, 1985.

ADDRESSES: The public hearing will be held in the Sycamore Room of the Hilton Inn, 3535 Rosedale Highway, Bakersfield, California. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah St., Stuite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Kangaroo rats are mammals specialized for rapid travel by hopping on their elongated hind legs, and for transportation of food in their external cheek pouches. They are found mainly in fairly dry, open country of western North America, where they construct burrows for shelter and often for storage of food. The giant kangaroo rat, found only in south-central California, was described by Merriam (1904) from specimens collected southeast of Simmler, San Luis Obispo County.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On September 27, 1985, a request for a public hearing was received from the Department of Food and Agriculture. The Service has scheduled this hearing for December 16, 1985 from 7:00 to 9:00 p.m. in the Sycamore Room of the Hilton Inn, 3535 Rosedale Highway, Bakersfield, California. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on October 15, 1985. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted for this proposal until December 31, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.;* 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).

List of Subjects in 50 CFR Part 17

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

Dated: November 21, 1985.

Richard J. Myshak,

Regional Director.

[FR Doc. 85-28252 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 228
Tuesday, November 26, 1985

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

Federal Crop Insurance Corporation

[Docket No. 2777S]

Crop Insurance Programs; Allowable Unit Determination

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice that it is soliciting comments from all interested parties relative to the unit determination for insurance purposes.

At a meeting held on April 11, 1985, a resolution was approved by the Board of Directors of FCIC that the insurance unit determination allowable for the principal annual spring crop insurance programs (excluding small grains (wheat, barley, oats, and rye)) in crop year 1986 be modified by deleting the applicable unit division guidelines on file at the county service office.

This would have the effect of limiting the unit, for insurance purposes, to all the insurable crop in which the producer has a 100% interest grown within a county, with no provision for further division.

On September 4–5, 1985, the Board of Directors held a meeting open to all interested parties. That meeting was attended by representatives of the private insurance sector and other agricultural interest groups. One of the purposes of the meeting was to elicit comments on the unit determination issue outlined above.

Also on September 16, 1985, the Board of Directors determined to delay action on the unit division guidelines until the first meeting of the Board after February 1, 1986. This resolution provides for a delay of approximately 6 months before any further consideration of a change in the insurance unit definition.

The Board directed that actuarial studies and field hearings be conducted to determine the impact upon the actuarial soundness of FCIC and to determine the interests of producers in the proposed change in the insurance unit definition which would reduce the capability of producers to further divide units beyond that allowed by policy definition. Any determination made as a result of this directive by the Board will be made at a meeting of the Board after February 1, 1986.

Several crop insurance policies will not be affected by the decision to delay changes in the unit division guidelines issue, as follows:

Foreage Production: The unit division guidelines had been removed from the Final Rule published on Wednesday, June 26, 1985, at 50 FR 26340. These regulations will be reviewed following the February, 1986, meeting.

Raisins: These regulations were published on July 12, 1985, at 50 FR 28367 with the unit division guidelines removed. The unit division guidelines will not be inserted in the final adopting rule. These regulations will also be reviewed following the February, 1986, meeting.

Cotton, Rice, Tobacco and Peanuts: These regulations, converted to an Actual Production History (APH) program, have production information required for yield determinations currently maintained by ASCS on a Farm Serial Number (FSN) basis. By tying the unit structure to the ASCS–FSN, duplication of effect in maintaining production records on a different basis is eliminated. Because of this, Cotton, Rice, Tobacco, and Peanut regulations are exempt from the April 11, 1985, decision by the Board.

The unit division guidelines are of primary concern to FCIC. The purpose of this notice therefore is to solicit comments from all interested parties on this issue. Comments will be accepted by FCIC until January 1, 1986. Written comments may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

All comments pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary to the Board of Directors, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

Done in Washington, D.C., on October 23, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–28119 Filed 11–25–85; 8:45 am]

BILLING CODE 3410-08-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting of National Transportation Facilitation Committee (NTFC), subgroup on Air Travel Accessibility.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting of the NTFC subgroup on Air Travel Accessibility to be held from 1:00 to 4:00 pm, December 6, 1985, to take place at the Department of Transportation.

The meeting, to be jointly chaired with the Department of Transportation, is being called to discuss a draft advisory standard on aircraft boarding chairs prepared for the ATBCB by its contractor.

DATE: Friday, December 6, 1985—1:00 to 4:00 pm.

ADDRESS: Department of Transportation, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For the meeting room and clearance to enter the DOT building, contact Dennis Cannon, Office of Technical Services, (202) 472–2700, on or before December 3, 1985.

Merrily Raffa,

Acting Executive Director.

[FR Doc. 85–28116 Filed 11–25–85; 8:45 am]

BILLING CODE 6820-BP-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on December 9, 1985, at the Ramada Inn, 3801 East Van Buren, Navajo Room, Phoenix, Arizona. The purpose of the meeting is to discuss civil rights issues related to the Yuma School District and the Arizona National Guard.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John P. White, or Philip Montez, Director of the Western Regional Office at (213) 688-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 20, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-28104 Filed 11-25-85; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on December 13, 1985, at the U.S. Commission on Civil Rights, 230 South Dearborn, Room 3280, Chicago, Illinois. The purpose of the meeting is to discuss the status of civil rights in Illinois and to plan committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzburg, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371 (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 20, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-28105 Filed 11-25-85; 8:45 am]

BILLING CODE 6335-01-M

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on December 10, 1985, at the Madison Metropolitan School District, 545 W. Dayton Street, Room 103, Madison, Wisconsin. The purpose of the meeting is to discuss possible followup to the Committee's monitoring of Indian civil rights issues and to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame Salter or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., November 20, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-28106 Filed 11-25-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-043]

Printed Vinyl Film From Brazil; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: International Trade Administration, Import Administration Department of Commerce.

ACTION: Notice of Final Results of Administrative Review and Revocation of Antidumping Finding.

SUMMARY: On March 5, 1985, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on printed vinyl film from Brazil. The review covered the one known manufacturer and/or exporter of this merchandise to the United States currently covered by the finding, Vulcan Material Plastico, S.A., and the period August 1, 1983, through July 31, 1984. There were no known shipments of this merchandise to the United States during the period and there were no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke. We received no comments. We also determined that there were no shipments of this merchandise to the United States during the period August 1, 1984, through the date of the tentative determination to revoke. We advised interested parties that there were no shipments and we provided an additional opportunity to comment. Again, we received no comments. Based on our analysis, these final results cover up to the date of our tentative determination to revoke and we revoke the antidumping finding on printed vinly film from Brazil.

EFFECTIVE DATE: November 26, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2209/5255.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 8754) the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on printed vinyl film from Brazil (38 FR 22794, August 24, 1973). The Department has now completed that administrative review.

Scope of the review

Imports covered by the review are

shipments of printed vinyl film, also known as printed polyvinyl chloride sheeting, currently classifiable under item 771.4312 of the Tariff Schedules of the United States Annotated.

The review covered the one known manufacturer and/or exporter of Brazilian printed vinyl film to the United States currently covered by the finding, Vulcan Material Plastico, S.A., and the period August 1, 1983, through July 31, 1984. There were no known shipments of this merchandise to the United States during the period and there were no known unliquidated entries. The Department has also determined that there were no shipments of this merchandise to the United States during the period August 1, 1984, through March 5, 1985, the date of publication of the tentative determination to revoke.

Final Results of Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The Department provided interested parties further preliminary results for the period up to the date of the tentative determination to revoke, and gave interested parties an additional opportunity to comment. Again, we received no comments. Based on our analysis, the final results of our review are the same as those presented in the preliminary results. For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value.

As a result of this review, the Department revokes the antidumping finding on printed vinly film from Brazil. The revocation applies to all unliquidated entries of Brazilian printed vinyl film entered, or withdrawn from warehouse, for consumption on or after March 5, 1985.

This administrative review, revocation, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54)

Dated: November 19, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-28184 Filed 11-25-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Official Authorized To Issue Export Visas for Certain Cotton Textile Products, Produced or Manufactured in the Republic of Maldives

November 21, 1985.

Under the terms of the cotton export visa arrangement effected by exchange of letters dated December 29, 1981 and March 22, 1982, between the Governments of the United States and the Republic of Maldives, the Government of the Republic of Maldives has notified the United States Government that Ali Ibrahim Manik has been authorized to issue export visas for textile and apparel products subject to the terms of the bilateral agreement. The purpose of this notice is to advise the public of this change.

The following is a complete list of officials of the Government of the Republic of Maldives who are currently authorized to issue export visas:

Mohamed Zahir
Mohamed Shareef
Hassan Adam
Ali Ibrahim
Ahmed Firaq
Raziyya Mahamed
Ali Ibrahim Manik

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28183 Filed 11-25-85; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Portugal

November 20, 1985.

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 November 27, 1985. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Depatrment of Commerce (202) 377-4212.

Background

On July 11, 1985, a notice was published in the **Federal Register** (50 FR 28243) which announced that, on June 26, 1985, the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of men's and boys' cotton shirts in Category 340, produced or manufactured in Portugal and exported during the twelve-month period which began on June 26, 1985 and extends through June 25, 1986. Inasmuch as no solution has been reached in consultations on a mutually satisfactory limit for this category, the United States Government has decided to control imports in Category 340, exported during the twelve-month period which began on June 26, 1985 at a level of 133,733 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Portugal, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

November 20, 1985

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 27, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 340, produced or manufactured in Portugal and exported during the twelve-month period which began on June 26, 1985 and extends through June 25, 1986, in excess of 133,733 dozen.[1]

Textile products in Category 340 which have been exported to the United States prior to June 26, 1985 shall not be subject to this directive.

Textile products in Category 340 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448 (b) or 1484(a)(1)(A) prior to the

[1] The level has not been adjusted to reflect any imports exported after June 25, 1985.

effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tarriff Schedules of the United States annotated (1985).

In carrying out the above directions, the Commisioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28151 Filed 11-25-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendment Relating to Frozen Pork Bellies Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposal to amend its frozen pork bellies futures contract. The proposed amendment would increase to 2.5 cents per pound from 1.5 cents per pound the discount on delivery units consisting of pork bellies that weigh in the range of 16 to 18 pounds. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before December 26, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed amendment to CME Rule 1404.C applicable to the frozen pork bellies futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The existing terms of the frozen pork bellies futures contract specify the par delivery unit as 38,000 pounds of either 12 to 14 or 14 to 16 pound frozen pork bellies. The contract's current terms also provide for the delivery of contract units consisting of frozen pork bellies weighing in the range of 16 to 18 pounds at a discount of 1.5 cents per pound. The proposed amendment would increase to 2.5 cents per pound the discount on delivery units consisting of pork bellies weighing in the range of 16 to 18 pounds.

The CME submits that the proposed discount reflects cash market pricing practices. The CME has submitted price data that indicates that the cash market discount on 16 to 18 pound pork bellies relative to 14 to 16 pound pork bellies has averaged 2.49 cents per pound over the past four crop years (1981, 1982, 1983 and 1984) during the 10-month period (November through August) in which bellies can be stored and inspected for CME delivery.

The Exchange proposes to apply the proposed amendment to all newly listed contracts commencing with the February 1987 delivery month.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposal submitted by the Chicago Mercantile Exchange relating to its frozen pork bellies futures contract is of major economic significance. Comments are requested concerning the proposed amendment. The CME proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on November 20, 1985.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 85-28170 Filed 11-25-85; 8:45 am]

BILLING CODE 6351-01-M

MidAmerica Commodity Exchange; Proposed Amendment Relating to the Soybean Meal Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: MidAmerica Commodity Exchange ("MCE" or "Exchange") has submitted a proposal to amend its soybean meal futures contract relating to cash settlement of futures contracts. The proposal would amend the contract's current cash settlement provisions, which limit the cash settlement of soybean meal futures contracts to those positions remaining open after the last day of trading. The amended rules would provide for cash settlement of positions in the contract commencing on the last business day prior to the first business day of the expiring contract month and extending through the last trading day of the expiring contract. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significane and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before December 26, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the MCE soybean meal futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: Existing MCE Rules specify that soybean meal futures contracts which are not offset prior to the expiration of trading will be settled in cash on the day following the last day of trading.[1] Under the contract's current terms, the cash settlement price is calculated by averaging the settlement prices established by the Chicago Board of Trade (CBT) for its expiring soybean meal futures contract during the last three trading days of the MCE contract.

The proposed amendments would permit cash settlement of MCE soybean meal futures contracts as of any day chosen by a short trader throughout the period extending from the last Exchange business day prior to the first business day of the expiring contract month through the last day of trading of the expiring contract month. Under the MCE's proposal, a short trader intending to cash settle futures contracts during the proposed cash settlement period would be required to submit to the Exchange clearing house notices of intention to cash settle one hour before the opening of trading in the soybean meal futures contract on the day selected for cash settlment. The clearing house would then be required to assign such notices to the holders of the oldest long soybean meal futures positions before the commencement of trading on the same day.

The proposed amendments would further specify the cash settlement price as the average of the settlement prices established by the CBT for its soybean meal futures contract for the day on which the notice of intention is tendered to the MCE clearing house and the following two business days. However, any MCE soybean meal futures contracts specified in notices tendered during the last three trading days of the contract month, and any soybean meal futures contracts which remain open after the expiration of trading in a contract month, would be cash settled on the next business day following the last trading day at the MCE. Cash settlement of any MCE futures contracts tendered during the last three trading days or remaining open after the expiration of trading would be at a settlement price equal to the average of the settlement prices established for the CBT's expiring soybean meal futures contract during the last three trading days for the expiring MCE soybean meal futures contract month.

The MCE intends to make the amendments effective for all newly listed contracts following Commission approval. In addition, the Exchange intends to list new contract months for trading pursuant to the revised contract terms that correspond to all currently trading contract months for which the first notice day falls at least 30 calendar days subsequent to Commission approval. The MCE indicates that the currently listed contract months would be traded concurrently with such new contract months and that no new months would be listed for trading pursuant to the contract's existing terms following the date the amendments are made effective.

The MCE indicates that the proposed amendments are necessary in order to provide a more efficient market for hedgers and lowered basis risk. In this regard, the Exchange indicates that a significant proportion of the liquidity in the soybean meal futures market which facilitates hedging is provided by the futures trading activity of persons who establish intermarket spread positions between the MCE soybean meal futures contract market and the CBT's soybean meal futures market. According to the MCE, since its futures contract's current terms limit the availability of cash settlement to the last trading day, intermarket spread traders holding short positions on the MCE and long positions on the CBT in expiring contract months run the risk of receiving delivery on their long positions held at the CBT during that part of the delivery month which precedes the last day of trading. The Exchange further indicates that, when such traders receive delivery on the CBT, they currently face such undesirable alternatives as carrying cash soybean meal until the last day of trading at the MCE, re-establishing their long CBT positions with the concomitant risk of receiving additional deliveries on these positions, or establishing long positions at the CBT in a deferred delivery month. The MCE indicates that, as a result of the risks associated with these undesirable alternatives, the contract's current terms cause prices offered at the MCE to be substantially greater than the prices offered for soybean meal futures contracts at the CBT, thereby disrupting normal hedging activity by inducing abnormal basis patterns and impairing the efficiency of the MCE market through the creation of large bid/ask price spread relationships.

The MCE indicates that, in addition to improving the hedging and pricing characteristics of the contract, the proposed amendments will allow long MCE traders who receive notices of intention to cash settle to establish opposite short MCE positions on the same day that such notices are received. The Exchange submits that this trading practice will allow long MCE traders to protect against the price risks encountered during the period provided for the calculation of the cash settlement price which would follow the receipt of notices of intention to cash settle by such traders under the proposal.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposal submitted by the MidAmerica Commodity Exchange relating to its soybean meal futures contract is of major economic significance. Comments are requested concerning the subject proposed amendment. The MCE proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254-6314.

Other materials submitted by the MCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendment should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by December 26, 1985.

Issued in Washington, DC, on November 20, 1985.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 85-28171 Filed 11-25-85; 8:45 am]

BILLING CODE 6351-01-M

[1] The last trading day for expiring MCE soybean meal futures contracts is the 12th from the last business day of the expiring contract month.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on DNA Management; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on DNA Management will meet in closed session on 18–19 December 1985 in the Defense Nuclear Agency, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review Defense Nuclear Agency management structure, organization and staffing to determine if they are appropriate for fulfilling the Agency's mission. Emphasis will include Agency functions as well as relationships with other U.S. Government Agencies and offices.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 21, 1985.

[FR Doc. 85–28189 Filed 11–25–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 14, 1985

The USAF Scientific Advisory Board Ad Hoc Committee on Options for Attack of Relocatable Targets will meet at The Pentagon, Washington, D.C. on December 16–17, 1985, 8:30 a.m. to 5:00 p.m. on both days.

The purpose of the meeting will be to review and finalize the Committee's report.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–28122 Filed 11–25–85; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 19 December 1985

Time: 0800–1600

Place: The Pentagon, Washington, DC—Room 2ED465

Agenda: The Army Science Board Ad Hoc Subgroup for the Detection of Soviet Theater Nuclear Forces will meet for briefings by various government agencies and laboratories. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–28191 Filed 11–25–85; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463, section 10(a)(2).

DATE: December 15, 1985 at 5:00 p.m. through December 17, 1985 at 11:00 a.m.

ADDRESS: The Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, S.W., Washington, D.C. 20202 (202–245–8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1003 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Eduction . . . on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board will be open to the public. The proposed agenda includes:

—An orientation and introduction of new Board members;

—A discussion and review of the past year;

—Development and discussion of policies and priorities for the coming year.

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Room 3100, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal Holidays.

Dated: November 20, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–28149 Filed 11–25–85; 8:45 am]

BILLING CODE 4000–01–M

Final Annual Operating Plan for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education issues the Fiscal Year 1986 Annual Operating Plan (AOP) for the Office for Civil Rights (OCR). The AOP describes the activities OCR plans to conduct in FY 1986 with respect to compliance and enforcement, technical assistance, and program management.

FOR FURTHER INFORMATION CONTACT: Fred Tate, Department of Education, 400 Maryland Ave., SW., Room 5000, Washington, DC 20202, (202) 732–1479.

SUPPLEMENTARY INFORMATION: The proposed FY 1986 Annual Operating Plan for the Office of Civil Rights was published in the **Federal Register** on July 22, 1985 (50 FR 29717–29720, with an

invitation to comment. No comments were received.

I. Introduction

The Office for Civil Rights (OCR) is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, handicap, or age, in the delivery of services or the provisions of benefits in programs or activities receiving financial assistance from the Department of Education (ED). The jurisdictional authorities under which OCR operates are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

These authorities cover ED funded programs and activities carried out by 50 State education and rehabilitation agencies and those of their sub-recipients, as well as those of the District of Columbia and the territories and possessions of the United States; 15,840 local education agencies; and 3,300 institutions of higher education. In addition, OCR's civil rights authorities cover programs and activities in other institutions that receive ED funds, such as libraries and museums.

OCR ensures compliance with Federal civil rights statutes by the recipients of ED financial assistance through two basic types of activities: compliance activities and technical assistance activities. Most of OCR's compliance activities (including complaint investigations, compliance reviews, and monitoring the implementation of some voluntary compliance plans) are required by the *Adams* court orders. However, OCR has some discretion over where it will conduct its compliance review and other monitoring activities and what those activities will cover. For the most part, OCR concentrates its investigative activities on those recipients that have been identified as having possible compliance problems. OCR also provides technical assistance, including the transfer of information, material, and shills to facilitate ED recipient's voluntary compliance with civil rights laws and to inform beneficiaries of their rights.

Compliance activities and technical assistance activities also may be combined. OCR may provide technical assistance to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion, either in response to a request from a recipient or after an inquiry by investigative staff as to whether a recipient would be interested in such assistance. As a result, compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level while assuring that the rights of beneficiaries are protected.

During FY 1986, OCR will continue to use two operational techniques designed to improve the efficiency of the case handling process. The first, Early Complaint Resolution (ECR), is a process in which OCR acts as a mediator between the complainant and the recipient to negotiate a settlement between them. If the mediation is successful, OCR closes the complaint without an investigation. If the parties cannot reach an agreement, OCR investigates the complaint. During FY 1985, ECR was offered in 238 complaints and accepted in 138 complaints (58 percent). Of those cases in which ECR was offered and accepted, 101 (73 percent) were resolved through mediation.

The second technique is pre-letter of findings (LOF) settlement. With this process OCR reviews its findings with the recipient on each of the issues raised in the complaint or covered by the compliance review in an attempt to reach a settlement prior to the issuance of an LOF addressing areas of noncompliance. When settlement is reached, OCR sets forth the terms of the settlement, along with the applicable statutory requirements, in an LOF sent to the recipient. Where the settlement results from a complaint, the complainant is also sent a copy of the LOF. If an area of noncompliance has been resolved, the LOF cites the basis for the violation findings and the remedy adopted by the recipient. OCR then monitors the implementation of these agreements.

It should be noted that the activities planned by OCP in FY 1986, and outlined below, are consistent with the appropriations authorized by Congress and approved by the President.

The following narrative and table described the activities that OCR plans for FY 1986.

II. Compliance and Enforcement Activities

OCR's compliance and enforcement responsibilities are divided into three general categories: complaint investigations, compliance reviews, and monitoring activities.

A. Complaint Investigations

OCR's primary compliance activity is the investigation and resolution of complaints alleging discrimination. Each timely, complete complaint must be resolved in accordance with established procedures and time frames.

OCR received 2,199 complaints and closed 2,040 (some of which had been filed prior to the beginning of the fiscal year) during FY 1985. OCR had 1,009 open complaints as of September 30, 1985. Alleged discrimination against handicapped persons was the basis of approximately 48 percent of complaint receipts; sex, race, multiple bases, national origin, and age complaints followed in descending order of frequency. The largest number of complaints involved elementary and secondary schools. In FY 1985, 77 percent of the complaints received involved issues of service delivery to students, 17 percent involved various employment issues, 3 percent involved both, and 3 percent involved other issues.

B. Compliance reviews

OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that OCR has some discretion in selecting the issues and institutions for review. This permits OCR to target resources on compliance problems that appear to be serious or national in scope and that may not have been raised by complaints.

During FY 1985, OCR initiated compliance reviews of 273 recipients; the Table on compliance review starts, included in this plan, gives information on the number of reviews initiated for each issue. During this same period, OCR closed 301 reviews, some of which had been initiated prior to the beginning of FY 1985. OCR had 119 open compliance reviews as of September 30, 1985.

During FY 1986, pursuant to the December 29, 1977 *Adams* order (*Adams* v. *Califano*, No. 3095-70 (D.D.C. December 29, 1977)), OCR intends to conduct an appropriate number of compliance reviews to ensure adequate enforcement of the civil rights laws.

While some review activities are required by the *Adams* order, most compliance reviews are discretionary and represent the only area in which OCR has flexibility to choose the institutions to be investigated, the issues to be examined, and the dates on which the reviews will begin. Selection of review sites has, in the past, been based on various sources of information, including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media, and the general public. In order to provide greater flexibility in the targeting of institutions and to help validate OCR's

current targeting methods, OCR initiated a random site selection program for compliance reviews in some regional offices during FY 1984. This experiment was designed to determine the relative effectiveness of a statistically random compliance review site selection compared with the traditional form of site selection in which regions nominate sites based on criteria set forth by the Assistant Secretary. The experiment called for five regions to select randomly compliance review sites. Of the five, two regions employed random site selection for 100 percent of their compliance reviews. Three of the five regions employed random site selection for 50 percent of their selections and traditional methods for the remainder. The remaining five regions employed traditional compliance review site selection techniques for all reviews. The analysis phase of the random site selection program for compliance reviews is continuing and evaluation results of the effectiveness of this alternative site selection procedure are expected in the near future. The traditional compliance review site selection techniques are now being utilized by all regions.

C. Monitoring Activities

OCR closes many of the complaints and compliance reviews in which it has identified violations of civil rights statutes on the basis of a commitment by the recipient institution to complete remedial action at a future date. OCR has a responsibility to ensure that agreements to complete such remedial actions are carried out. To fulfill that responsibility, OCR may require a recipient to submit one or more progress reports detailing efforts to come into compliance with applicable laws. In some cases, OCR may go on-site to monitor a recipient's compliance with a negotiated remedial action plan. Other types of OCR monitoring activities include monitoring of higher education desegregation plans pursuant to the March 24, 1983 *Adams* order (*Adams* v. *Bel*, No. 3095–70 (D.D.C. March 24, 1983)) and vocational education Methods of Administration. In FY 1986, OCR will monitor the following:

- Implementation by recipient instiutions of remedial action plans resulting from OCR complaint investigations and compliance reviews.
- Implementation of *Adams* higher education desegregation plans of approximately 416 institutions of higher education in 13 States.
- Review and implementation of corrective action plans to provide educational opportunities to national origin minority students who are limited English proficient (i.e., Title VI *Lau* plans).
- Activities of 50 States, four territories, and the District of Columbia, to ensure that they fulfill their Methods of Administration responsibilities under the Vocational Education Guidelines and the July 1979 Memorandum of Procedures regarding the civil rights compliance of their vocational education subrecipients.

III. Technical Assistance Activities

Technical assistance complements OCR's compliance activities because it encourages voluntary compliance. Through technical assistance, OCR is able to reach a far greater number of recipients than it could solely through complaint investigations or compliance reviews. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and the ED implementing regulations and of means to meet these responsibilities. OCR provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. During FY 1985, in addition to responding to requests for technical assistance, OCR regional offices were encouraged to increase technical assistance outreach activities, to the extent staff resources were available, based on ongoing assessments of recipient and beneficiary needs.

In FY 1986, OCR will conduct the following technical assistance activities:

- Continue development and implementation of Memoranda of Understanding with State and human rights agencies to facilitate meeting mutual civil rights compliance goals and objectives and to promote the sharing of information.
- Coordinate with other ED program offices on the provision of civil rights related technical assistance.
- Facilitate the exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among OCR staff providing technical assistance.
- Provide materials and courses to OCR regional investigators and legal staff to facilitate the provision of technical assistance training to education institutions and State and local governments.
- Provide training to State and local education agencies to enhance their capabilities to carry out civil rights activities.
- Prepare materials for dissemination to recipients and beneficiaries, summarizing and explaining OCR policies and regulations.

IV. Program Management Activities

In conducting its compliance, enforcement, and technical assistance activities, OCR continues to implement a comprehensive program that includes—

- Formulating or updating regulations, policies, and investigative manuals, including—
  - —Promulgating ED regulations to implement the Age Discrimination Act of 1975;
  - —Amending the Title IX and Section 504 regulations to provide for vocational education Methods of Administration;
  - —Revising the benefits of employment section of the Title IX regulation to reflect the Supreme Court's decision in *Arizona Governing Committee* v. *Norris*, 103 S.Ct. 3492 (1983);
- Providing technical guidance on complaints and compliance reviews referred from regional offices;
- Conducting hearings before Administrative Law Judges on the compliance of Federal financial recipients with civil rights requirements;
- Meeting with congressional staffs, school district representatives, college and university officials, complainants, and civil rights groups to discuss OCR activities;
- Conducting and evaluating OCR surveys and data collection projects to obtain information on recipients and beneficiary populations for enforcement purposes;
- Providing in-house programmatic training to investigators and legal staff engaged in civil rights compliance activities;
- Conducting a quality assurance program to systematically review, evaluate, and recommend improvements in OCR operations; and
- Operating a Management-by-Objectives program designed to enhance management planning and to track performance in meeting organizational goals.

V. Summary

While regional programs will vary due to considerations such as the number and type of complaints received, compliance reviews conducted, and requests for technical assistance, all OCR activities will be guided by national policies, priorities, and direction. As in previous year, each Regional Director will be responsible for timely fulfillment of OCR's obligations in handling complaint investigations and compliance reviews, monitoring compliance plans, and providing

technical assistance to recipients and beneficiaries of ED financial assistance. A large part of each region's compliance program will involve the investigation of complaints of discrimination.

Compliance reviews initiated in FY 1986 will include, as appropriate, each of OCR's civil rights jurisdictions in the geographic area served by each regional office. Monitoring activities will focus on ensuring that recipients comply with voluntary compliance plans and fulfill their vocational education Methods of Administration responsibilities. OCR will design technical assistance activities to respond to recipient and beneficiary needs.

Paperwork Reduction Act of 1980

The information collection activity to be undertaken pursuant to this plan is the Fall 1986 Elementary and Secondary School Civil Rights Survey. A notice will be published in the **Federal Register** in the fall of 1985, prior to submission of the survey to OMB, notifying the public or OCR's intention to gather this data. This survey is scheduled for OMB approval in February 1986 and for distribution to selected local education agencies in the fall of 1986. In addition to the above survey, OCR also jointly sponsors two surveys with the National Center for Education Statistics, the Fall Enrollment and Compliance Report of Institutions of Higher Education Survey (OMB control number 1850–0035) and the Earned Degrees and Other Formal Awards Conferred Survey (OMB control number 1850–0053).

COMPLIANCE REVIEW STARTS BY ISSUE

[Oct. 1, 1984-Sept. 30, 1985]

	Review starts
ELEMENTARY AND SECONDARY EDUCATION ISSUES	
Within-school discrimination	56
Vocational education	22
Special purpose schools	9
Free appropriate public education	25
Employment	5
Segregated schools	1
Within district comparability	1
Joint issue: Within-school discrimination and free appropriate public education	15
Other elementary and secondary reviews	29
POSTSECONDARY ISSUES	
Program accessibility	20
Admissions	34
Intercollegiate athletics	6
Vocational education	13
Student services	33
Vocational rehabilitation services	0
Employment	1
Other postsecondary reviews	3
Total	273

Dated: November 21, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–28178 Filed 11–25–85; 8:45 am]

BILLING CODE 4000–01–M

National Council on Educational Research; Meetings

AGENCY: National Council on Educational Research, Education.

ACTION: Reports Committee Meeting of the National Council on Educational Research in lieu of Full Council Meeting.

Matters to be Discussed: Discussion of the 1985 Annual Report.

DATE: December 5th and 6th, 1985.

ADDRESS: National Council on Educational Research, 2000 L Street, NW., Suite 617–B, Washington, DC.

Status: Open.

TIME: Thursday, December 5, 1985 1:00–5:00 p.m. Friday, December 6, 1985 9:00 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia Hines, National Council on Educational Research, 2000 L Street, NW., Suite 617–B, Washington, DC 20036, 202–254–7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under section 405 of the General Education Provisions Act.

The meetings of the Council are open to the public, unless otherwise stated.

Dated: November 21, 1985.

Patricia Hines,

National Council on Educational Research.

[FR Doc. 85–28223 Filed 11–25–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Atomic Energy Agreement; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the reprocessing of U.S.-supplied fuel at the Tokai reprocessing facility in Japan. This subsequent arrangement would extent the U.S.-Japan Joint Determination that safeguards may be effectively applied to the reprocessing at the Tokai facility of U.S. supplied fuel, from December 31, 1985 to December 31, 1986.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: November 20, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–28145 Filed 11–25–85; 8:45 am]

BILLING CODE 6450–01–M

Coal Policy Committee of the National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Thursday, December 12, 1985; 4:00 p.m. to 5:00 p.m.

Place: Westin Hotel, 1672 Lawrence Street, Denver, Colorado.

Contact: Cecilia MacCarthy, U.S. Department of Energy, Office of Fossil Energy (FE–23), Washington, D.C. 20545, Telephone: 301/353–2847.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Committee: To review requests for advice, information, etc., from the Secretary of Energy to the National Coal Council, and to recommend to the Council studies to be undertaken by the Council.

Tentative Agenda

—Call to Order by Gerald Blackmore, Chairman
—Reports of Work Group Chairmen
  Coal Conversion—Walter Vannoy
  Coal Technology—Irving Leibson
  Interstate Electricity Transmission—Lawrence Forgy
—Discussion of any other business properly brought before the Committee
—Public Comment—10 Minute Rule
—Adjournment

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee

will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Cecilia MacCarthy at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 14, 1985.

Donald J. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-28144 Filed 11-25-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES86-7-000 et al.]

Interstate Power Co. et al.; Electric Rate and Corporate Regulation Filings

November 18, 1985.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. ES86-7-000]

Take notice that on October 30, 1985, Interstate Power Company (Applicant) filed an application with this Commission seeking an order pursuant to Section 204 of the Federal Power Act for authorization to issue short-term promissory notes to lending banks and/or commercial paper, not to exceed an aggregate of $50 million outstanding at any one time, said short-term promissory notes to be issued on or before December 31, 1986 and to mature not later than December 31, 1987, with not to exceed twelve-month maturities, and said commercial paper to be issued with not to exceed nine-month maturities and to mature on or before December 31, 1987.

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Company

[Docket No. ER86-6-000]

Take notice that on October 31, 1985 American Electric Power Inc. (AEP) tendered for filing a revision in its filing of September 30, 1985. The effective date of Modification No. 12 to the Interconnection Agreement between Indiana and Michigan Electric Company and Public Servcie Company of Indiana will be September 7, 1985 instead of October 1, 1985. There will be only one effective date.

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this document.

3. Signal Environmental Systems Inc.

[Docket No. EL86-9-000]

Take notice that on November 1, 1985, Signal Environmental Systems Inc., ("Resco") tendered for filing a petition for waiver of the Commission's regulations under the Federal Power Act regarding the submission of cost-of-service data, the requirement that rate schedules be submitted no more than 120 days before the rates are to become effective, accounting practices, adjustment and certification of accounts and reports, the filing of procurement policies and practices, the filing of certain statements and reports, the assessment of annual charges, property dispositions and consolidations, securities issuances and assumptions of liability, and the holding of interlocking directorate positions as such regulations apply to a solid waste fueled small power production facility with an electric generation capacity of between 30 and 80 megawatts to be located in Bridgeport, Connecticut.

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket No. ER85-461-001]

Take notice that on October 31, 1985 Kansas Gas and Electric tendered for filing an original and fourteen copies of its quarterly report in compliance with 18 CFR 35.13 (d)(b).

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Gas and Electric Company

[Docket No. ER84-136-005]

Take notice that on October 2, 1985 Kansas Gas and Electric Company (KG&E) tendered for filing a letter stating that it did not owe Chanute a refund pursuant to Commission order dated August 30, 1985 for the following reasons.

1. KGE already recalculated the bills for the refunded period.

2. Chanute never paid the bills originally rendered.

KG&E said it initially applied arbitration rates to bills to Chanute for service on and after November 9, 1983. The Commission order in Docket No. ER84-136-000 that established a June 5, 1984 effective date automatically triggered a revision in the bills KG&E had rendered for servcie up to that time. The bill for service in May had not yet been rendered and thus appropriately reflected the pre-arbitration rate level.

KG&E said Chanute paid it less than the billed amount for services it received between November 9, 1983 and April 30, 1984 based on the arbitration rate and the revised bills.

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. South Carolina Electric & Gas Company

[Docket No. ER86-144-000]

Take notice that on November 12, 1985, South Carolina Electric & Gas Company (SCE&G) tendered for filing a letter agreement extending the term of Short Term Power Sales Agreement between SCE&G and Southern Companies. By the terms of the letter agreement, the Short Term Power Sales Agreement has been extended to allow for additional purchases by Southern Companies from South Carolina Electric & Gas Company for contemporaneous sale and delivery to Florida Power & Light Company. The extended term of the Agreement will allow delivery of an additional 460 GWH up to a total of 1,000 GWH during the period September 3, 1985 to December 31, 1985.

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER86-143-000]

Take notice that on November 12, 1985, South Carolina Electric & Gas Company (SCE&G) tendered for filing an Extended and Revised Short Term Power Sales Agreement dated September 24, 1985, between Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern Companies") and SCE&G. This Agreement is for the sale of energy from SCE&G to Southern Companies of up to 1,000 GWH.

SCE&G requests an effective date of September 30, 1985, and therefore requests waiver of the Commission's notice rquirements.

Copies of this filing have been mailed to Southern Companies according to SCE&G.

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER 86-164-000]

Take notice that Virginia Electric and Power Company (the Company), on November 8, 1985, tendered for filing revised rate schedules for service to Old Dominion Electric Cooperative. The Company states that the revised rate schedules are intended to correct an error in rate schedules filed in Docket No. ER85-400-000 and therefore requests waiver of the notice requirements.

Copies of the corrected rate schedules were served upon Old Dominion Electric Cooperative, the Virginia State Corporation Commission and the parties in Docket No. ER85-400-000.

Comment date: November 29, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28124 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-638-001 et al.]

AES Thames et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment Date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

November 19, 1985.

Take notice that the following filings have been made with the Commission.

1. AES Thames, Inc.

[Docket No. QF85-638-001]

On November 1, 1985, AES Thames, Inc., (Applicant), of 1925 N. Lynn Street, Suite 1200, Arlington, Virginia 22209, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. The orgininal application was noticed in the **Federal Register** on August 20, 1985. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located at Uncasville, Connecticut. It will consist of two circulating fluidized bed boilers and one extraction steam turbine generated unit. Extraction steam generated will be used in a Recycle Paper Mill. The net electric power production capacity of the facility will be 180 MW. The primary energy source will be coal. The installation of the facility will begin in August, 1986.

2. AES Petrolia, Inc.

[Docket No. QF86-285-000]

On November 1, 1985, AES Petrolia, Inc, (Applicant), of 1925 N. Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Petrolia, Pennsylvania. It will consist of circulating fluidized bed boilers and an extraction-condensing steam turbine generating unit. Extraction steam produced by the facility will be used at Koppers Company for chemical manufacturing processes. The net electric power production capacity of the facility will be 137.9 MW. The primary energy source will be coal. The installation of the facility will begin in January, 1987.

3. American REF-FUEL Company of Hempstead

[Docket No. QF86-124-000]

On October 30, 1985, American REF-FUEL Company of Hempstead (Applicant), of P.O. Box 3151, Houston, Texas 77253 submitted for filig an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at Long Island, New York. It will consist of three biomass fired boiler units. The net electric power production capacity of the facility will be 60.2 MW. The primary energy source will be biomass consisting of commercial and municipal solid waste.

4. Coldwater Power Project, Inc.

[Docket No. QF86-107-000]

On October 30, 1985, Coldwater Power Project, Inc. (Applicant), of 2576 Hartnell Avenue, Redding California 96002 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filig.

The small power production hydroelectric facility (FERC P. 8317) will be located near Montgomery Creek in Shasta County, California and will utilize the water resources of Roaring Creek. The electric power production capacity of the facility will be 5 MW.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. Concept Technology, Inc.

[Docket No. QF86-88-000]

On October 28, 1985, Concept Technology, Inc. (Applicant), of 20 Nassau Street, Princeton, New Jersey 08542 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Brooklyn, New York. The facility will contain a Tecogen Model No. CM60 module, consisting of a natural gas-fired engine, an induction generator and a heat exchanger. The exhaust heat will be used to heat the boiler feed water for Marien-Heim Tower. The primary energy source will be natural gas. The net electrical power production capacity of the facility will be 60 kW. The installation of the facility is scheduled to beging on February 15, 1986.

6. Floyd N. Bidwell (Lost Creek Hydroelectric Project No. 2)

[Docket No. QF86-127-000]

On October 30, 1985, Floyd N. Bidwell (Applicant), of 2576 Hartnell Avenue, Redding, California 96002 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 455 kilowatt hydroelectric facility (P. 5130) will be located in Shasta County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. Floyd N. Bidwell (Lost Creek Hydroelectric Project No. 1)

Docket No. QF86-128-000]

On October 30, 1985, Floyd N. Bidwell (Applicant), of 2576 Hartnell Avenue, Redding, California 96002 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.4 megawatt hydroelectric facility (P. 3863) will be located in Shasta County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

8. Gallia Hydro Partners

[Docket No. QF86-161-000]

On October 31, 1985, Gallia Hydro Partners (Applicant), of Third Floor, 91 Newbury Street, Boston Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 48 megawatt hydroelectric facility will be located on the Ohio River, on the State line between Gallia County, Ohio and Mason County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Hemphill Power & Light Company

[Docket No. QF84-423-001]

On October 21, 1985, Hemphill Power & Light Company (Applicant), of RRI, Box 800, New London, New Hampshire 03257, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. The original application was noticed in the **Federal Register** on August 22, 1984. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Springfield, New Hampshire. The primary energy source will be wood chips, bark and fines. the net electric power production capacity of the facility will be 13.8 MW. The facility's expected on-line date is January 1988.

10. IBP Inc.

Docket No. QF86-157-000]

On October 31, 1985, IBP, Inc. (Applicant), of P.O. Box 494, Dakota City, Nebraska 68731 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Holcomb, Kansas. The facility will consist of an internal combustion diesel engine generating unit. Both steam and hot water produced by the facility will be used in the cleaning process associated with processing beef. The electric power production capacity of the facility will be 12.5 MW. The primary energy source will be natural gas. the installation of the facility will begin in late 1985 or 1986.

11. Kingsburg Cogen

[Docket No. QF86-155-000]

On October 31, 1985, Kingsburg Cogen. (Applicant), of One Research Parkway, Meriden, Connecticut 06450-7124 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Kingsburg, California. The facility will consist of a combustion turbine generating unit, a waste heat recovery steam generator, and an extraction-condensing steam turbine generating unit. Extraction steam produced by the facility will be used by Sun-Maid Growers for various process uses. The net electric power production capacity of the facility will be 28.6 MW. The primary energy source will be natural gas. The installation of the facility will begin in July 1, 1986.

12. K.L. Parkhurst Corporation

[Docket No. QF86-152-000]

On October 30, 1985, K.L. Parkhurst Corporation (Applicant), of P.O. Box 414, Mill Street, North Hartland, Vermont 05052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 400 kilowatt hydroelectric facility is located in Windsor County, Vermont.

A separate application is required for a hydroelectric project license, primarily permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

13. Lynchburg Hydro Associates

]Docket No. QF86-168-000]

On October 31, 1985, Lynchburg Hydro Associates (Applicant), of Third Floor, 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power

production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.4 megawatt hydroelectric facility will be located on the James River in the City of Lynchburg, Virginia.

A separate application is requried for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

14. Mainstream Hydro Corporation

]Docket No. QF86-153-000]

On October 30, 1985, Mainstream Hydro Corporation (Applicant), of P.O. Box 414, Mill Street, North Hartland, Vermont 05052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,890 kilowatt hydroelectric facility will be located at the Broad Street Dam in the City of Claremont, in Sullivan County, New Hampshire.

A separate application is requried for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

15. Mega Hydro, Inc.

]Docket No. QF86-117-000]

On October 30, 1985, Mega Hydro, Inc. (Applicant), of 2576 Hartnell Avenue, Redding, California 96002, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Madera County, California. It will be a hydroelectric power production facility. The net electric power production capacity of the facility will be 1.75 MW. The primary energy source will be falling water.

A separate application is requried for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

16. Olsen Power Project, Inc.

[Docket No. QF86-116-000]

On October 30, 1985, Olsen Power Project, Inc. (Applicant), of 2576 Hartnell Avenue, Redding, California 96002, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant top § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Shasta County, California. It will be a hydro electric power production facility. The net electric power production capacity of the facility will be 5.0 MW. The primary energy source will be falling water.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

17. Turnbull Partners and Greenfields Irrigation District

[Docket No. QF86-160-000]

On October 31, 1985, Turnbull Partners and Greenfields Irrigation District (Applicant), of Third Floor, 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9.5 megawatt hydroelectric facility will be located on the Spring Valle Canal in Teton County, Montana.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

18. Uncompahgre Valley Water Users Association and Montrose Partners

[Docket No. QF86-166-000]

On October 31, 1985, Uncompahgre Valley Water Users Association and Montrose Partners (Applicant), of Third Floor 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power produciton facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 49 megawatt hydroelectric facility will be located in Montrose County, Colorado.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

19. Upper Mississippi Water Company, Inc.

[Docket No. QF86-167-000]

On October 31, 1985, Upper Mississippi Water Company, Inc. c/o Mr. Loren E. Dessonville, Kutak, Rock and Huie (Applicant) of 1650 Farnam Street, Omaha, Nebraska 68101 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 megawatt hydroelectric facility will be located at River Mile in Marietta, Ohio.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

20. Valsetz Power Company

[Docket No. QF86-221-000]

On November 1, 1985, Valsetz Power Company (Applicant), of P.O. Box 1414, 1600 South West 4th Avenue, Portland, Oregon 97201 (c/o Boise Cascade Corp.) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4,000 kW hydroelectric facility (FERC Project No. 7217) is located in Polk County, Oregon.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

21. Weber Basin Water Conservancy District

[Docket No. QF86-76-00]

On October 24, 1985, Weber Basin Water Conservancy District (Applicant), of 2837 East Highway, Layton, Utah 84041 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,478 kW hydroelectric facility (Projects No. 6453-000) will be located at the existing Causey Dam on the South Fork, Ogden River in Weber County, Utah.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

22. Zond Windsystem Partners, Ltd. Series 85-C

[Docket No. QF86-159-000]

On October 31, 1985, Zond Windsystem Partners, Ltd. Series 85-C (Applicant), of 112 South Curry Street, Tehachapi, California 93561 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Alameda County, California. The primary energy source will be wind. The facility will consist of 25 wind turbine generators rated 100 kilowatts each, with a total electric power production capacity of 2.5 megawatts.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28125 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-199-001]

Algonquin Gas Transmission Co.; Compliance Filing

November 21, 1985.

Take notice that on October 31, 1985, Algonquin Gas Transmission Company (Algonquin Gas) tendered for filing Substitute First Revised Sheet No. 641 to its FERC Gas Tariff, Second Revised Volume No. 1 in compliance with the Commission's orders issued on October 10, 1985 and October 25, 1985 in the above-referenced docket. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 13, 1985.

Algonquin Gas has in general required Buyers under its tariff to remit payment on the nineteenth day of the month, or one day prior to the date that Algonquin Gas must, in turn, remit payment to Texas Eastern Transmission Corp. (Texas Eastern). However, when the nineteenth or the twentieth day of the month falls on a Saturday, Sunday or bank holiday, Substitute First Revised Sheet No. 641 permits the Buyers to remit payment on the first business day following the nineteenth day of the month. This latter provision, which may not permit timely receipt of funds to meet the payment obligation to Texas Eastern, nevertheless, is being submitted, subject to obtaining experience thereunder with a possibility of subsequent modification, as a reasonable balance between the condition imposed by the Commission and Algonquin Gas' undertaking in its October 17, 1985 motion for reconsideration. Algonquin Gas also states that it has specified that payments will be deemed made when they are received by Algonquin Gas, inasmuch as the timely *receipt* of funds is of critical importance where wire transfer payment of such funds is to be made to Texas Eastern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28220 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-51-002]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

November 21, 1985

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on November 13, 1985, tendered for filing Substitute Fifty-Fifth Revised Sheet No. 57 to its FERC Gas Tariff, First Revised No. 1, proposed to be effective November 1, 1985.

Substitute Fifty-Fifth Revised Sheet No. 57 reflects the underlying rates as prescribed by the Commission letter dated October 31, 1985 in Docket Nos. TA86-1-51-000 and TA86-1-51-001.

On November 1, 1985 Great Lakes filed with the United States Court of Appeals for the District of Columbia Circuit a Motion to Clarify Prior Order and Enforce Mandate requesting the Court to issue a further order stating its intent that the rate design methodology ordered by the Court on August 13, 1985, should be reinstated effective October 1, 1985, and should remain in effect intil changed prospectively in accordance with law. If the Court issues such an order, Fifty-Fourth Revised Tariff Sheet No. 57 and Fifty-Fifth Revised Tariff Sheet No. 57, previously filed by Great Lakes, would reflect the appropriate rates and would be refiled in compliance with the Court's Order thereby rendering moot Substitute Fifty-Fifth Revised Tariff Sheet No. 57 filed herewith.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 85-28221 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-391 et al.]

Great Plains Gasification Associates; Notice of Prices Charged

November 21, 1985.

In the matter of Great Plains Gasification Associates, Docket No. CP78-391; ANR Pipeline Co.; Natural Gas Pipeline Co. of America; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Transcontinental Gas Pipe Line Corp., Docket Nos. CP75-278 and CP77-556.

Take notice that on August 23, 1985, Natural Gas Pipeline Company of America (Natural); 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP78-391, *et al.*, a notice of prices changed under Natural's gas purchase agreement with Great Plains Gasification Associates during the 12-month period ending June 30, 1985. The notice filed by Natural is required under Section 3 of Article IV of the offer of settlement approved by the Commission in the above referenced dockets in Opinion No. 119, 15 FERC ¶ 61,106 (April 30, 1981). Section 1 of Article IV of the offer of settlement also requires that this notice be publicly noticed in accordance with the Commission's regulations.

Natural notes that during the first five years the price of synthetic natural gas (SNG) purchased from Great Plains Gasification Associate is set by contract as the lower of either the formula price or the No. 2 fuel oil price. It is indicatged that throughout the period for which Natural reported prices the No. 2 fuel oil price, converted to an equivalent million Btu basis assuming 138,690 Btu's per gallon of No. 2 fuel oil, was the lower price. Accordingly, it is further indicated that SNG prices ranged from $5.4582 per million Btu (February 1985) to $6.0999 per million Btu (July 1984) during the 12-month period. June 1985 prices were stated as $5.588 per million Btu's, compared to $4.8639 per million Btu's under the formula.

A copy of Natural's notice is available at the Commission's Office of Public Information. Any parties desiring to comment on the Notice should on or before December 10, 1985, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28216 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-391 et al.]

Great Plains Gasification Associates; Notice of Prices Charged

November 21, 1985

In the matter of: Great Plains Gasification Associates, Docket No. CP78-391, ANR Pipeline Co.; Natural Gas Pipeline Co. of America; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Transcontinental Gas Pipe Line Corp., Docket Nos. CP75-278 and CP77-556.

Take notice that on August 12, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No CP78-391, *et al.*, a notice of Prices charged under ANR's gas purchase agreement with Great Plains Gasification Associates during the 12-month period ending June 30, 1985. The notice filed by ANR is required under Section 3 of Article IV of the offer of settlement approved by the Commission in the above referenced dockets in Opinion No. 119, 15 FERC ¶ 61,106 (April 30, 1981). Section 1 of Article IV of the offer of settlement also requires that this notice be publicly noticed in accordance with the Commission's regulations.

ANR notes that during the first five years the price of synthetic natural gas (SNG) purchased from Great Plains Gasification Associates is set by contract as the lower of either the formula price or the No. 2 fuel oil price. It is indicated that throughout the period for which ANR reported prices the No. 2 fuel oil price, converted to an equivalent million Btu basis assuming 138,690 Btu's per gallon of No. 2 fuel oil, was the lower price. Accordingly, it is further indicated that SNG prices ranged from $5.4582 per million Btu (February 1985) to $6.0999 per million Btu (July 1984) during the 12-month period. June 1985 prices were stated at $5.588 per million Btu's compared to $6.8639 per million Btu's under the formula.

A copy of ANR's notice is available at the Commission's Office of Public Information. Any parties desiring to comment on the Notice should on or before December 10, 1985, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28215 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-391 et al.]

Great Plains Gasification Associates; Notice of Prices Charged

November 21, 1985

In the matter of: Great Plains Gasification Associates; Docket No. CP78-391; ANR Pipeline Co., Natural Gas Pipeline Co. of America; Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Transcontinental Gas Pipe Line Corp., Docket Nos. CP75-278 and CP77-556.

Take notice that on August 8, 1985, Transcontinental Gas Pipe Line Corporation (Transco), 2700 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP78-391, *et al.*, a notice of prices charged under Transco's gas purchase agreement with Great Plains Gasification Associates during the 12-month period ending June 30, 1985. The notice filed by Transco is required under Section 3 of Article IV of the offer of settlement approved by the Commission in the above referenced dockets in Opinion No. 119, 15 FERC ¶ 61,106 (April 30, 1981). Section 1 of Article IV of the offer of settlement also requires that this notice be publicly noticed in accordance with the Commission's regulations.

Transco notes that during the first five years the price of synthetic natural gas (SNG) purchased from Great Plains Gasification Associates is set by contract as the lower of either the formula price or the No. 2 fuel oil price. It is indicated that throughout the period for which Transco reported prices the No. 2 fuel oil price, converted to an equivalent million Btu basis assuming 138,690 Btu's per gallon of No. 2 fuel oil, was the lower price. Accordingly, it is further indicated that SNG prices ranged from $5.4582 per million Btu (February 1985) to $6.0999 per million Btu (July 1984) during the 12-month period. June 1985 prices were stated at $5.588 per million Btu's compared to $6.8639 per million Btu's under the formula.

A copy of Transco notice is available at the Commission's Office of Public Information. Any parties desiring to comment on the Notice should on or before December 10, 1985, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28214 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-3-000]

F.G. Holl; Petition for Adjustment

Issued November 21, 1985.

Take notice that on October 21, 1985, F.G. Holl (Holl) filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting adjustment relief from the filing requirement of § 271.805 of the Commission's regulations so that it will be excused from refunding a portion of the NGPA section 108 stripper well rates collected for gas sold from the Enlow No. 3 well during the period, May 1, 1980 through April 25, 1984. The Enlow No. 3 well is located in the Wil Field, Edwards County, Kansas and the gas produced there-from is sold to Northern Natural Gas Company.

Holl states that the Kansas State Corporation Commission (KSCC) initially determined on July 24, 1980, that the subject well qualified for NGPA section 108 stripper well status and that such determination was based on the well's average daily production rate of 60 Mcf or less for the 90 day production period from December 1, 1979 through February 29, 1980. Holl states that beginning in 1979, production from the well began to decline because of water encroachment and that in February 1980 it employed a recognized enhanced recovery technique to remove water from the well and increase production. Holl states that due to the success of the recovery technique, the well's production increased to an average daily rate of 86 Mcf for a subsequent 90 day production period, thereby causing the well to be disqualified for stripper well status as of May 1, 1980. Holl states that although it continued to collect the section 108 rate, it failed to timely file, as required by section 271.805 of the Commission's regulations, either a notice of stripper well disqualification or a petition for a determination that the increased production from the well resulted from the application of a recognized enhanced recovery technique. Holl states that on April 26, 1984 it filed a new application for a section 108 determination and on January 29, 1985 filed a petition for determination that the well's increased production was the result of a recognized enchanced recovery technique. Both applications were approved by the KSCC.

In support of its petition, Holl states that its failure to make the proper filings in connection with the status of the subject well resulted from inadvertent error. Holl states that if adjustment relief is not granted, it will be required to refund approximately $388,642.11 in principal and interest. Further Holl states that if limited to collecting the NGPA section 104 rate for gas sold during the period when the well was ineligible for stripper well status, it will suffer an out-of-pocket loss of $9,534.12. Holl states that such an out-of-pocket loss will cause it to suffer a special hardship.

The procedures applicable to the conduct of this proceeding are set forth in Rules 1101-1117 (Subpart K) of the Commission's rules of practice and procedures. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

FR Doc. 85-28224 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9250-000, 7223-000, 4684-001, 2934-005 and 2934-006]

Montana Natural Energy, Inc., STS Consultants Ltd., Long Lake Energy Corp,. New York State Electric and Gas Corp., Availability of Environmental Assessment and Finding of No Significant Impact

November 21, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project Name	State	Waterbody	Nearest town	Applicant
			Exemptions		
9250-000	West Rosebud Creek	MT	West Rosebud Creek	Absarokee	Montanta Natural Energy, Inc.
7223-000	Fallasburg Dam	MI	Flat River	Lowell	STS Consultants, Ltd.

Project No.	Project Name	State	Waterbody	Nearest town	Applicant
			Licenses		
4684 & 2934	Stillwater & Upper Mechanicville	NY	Hudson River	Stillwater	Long Lake Energy Corp., and New York State Electric & Gas Corp.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28217 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-21-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 21, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on November 18, 1985 tendered for filing to be effective December 19, 1985 the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet No. 154
Second Revised Sheet No. 155
Second Revised Sheet No. 156
Second Revised Sheet No. 167
First Revised Sheet No. 171
First Revised Sheet No. 183
First Revised Sheet No. 184

Transco states that the purpose of this filing is to revise the provisions of its interruptible transportation rate schedules, specifically Rate Schedules T-I, T-II, T-III and T-P, to permit Transco to charge to each shipper any and all filing fees associated with a shipper's request for service under each of these rate schedules.

Transco further states that copies of the instant filing have been mailed to each of its customers and State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28222 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8999-000, 9009-000, 9263-000, 6867-001, and 8396-000]

White's Bridge Hydro, Co. (Victor D. Leabu), Pan Pacific Hydro, Inc., Hutchens-Stevens Branch Hydro, Inc., Daniel J. Horall, Great Bear Hydropower, Inc.; Availability of Environmental Assessment and Finding of No Significant Impact

November 21, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
8999-000	White Bridge	MI	Flat River	Smyra	White's Bridge Hydro Company (Victor D. Leabu).
9009-000	Cherry Flat	CA	North Forth Stuat Fork Creek	Weaverville	Pan Pacific Hydro, Inc.
9263-000	Hutchens-Stevens	VT	Jail Branch	East Barre	Hutchens-Stevens Branch Hydro, Inc.
			Licenses		
6867-000	Williams Dam	IN	East Fork of White River	Bedford	Daniel J. Horral.
8396-000	Columbia Lake	NJ	Paulins Kill	Knowlton	Great Bear Hydropower, Inc.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28218 Filed 11-25-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board, Chemistry Review Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Chemistry Review Panel of the Energy Research Advisory Board (ERAB).

Date and time: December 18, 1985—9:00 a.m.—5:00 p.m. December 19, 1985—9:00 a.m.—5:00 p.m.

Place: Ramada Inn, 6600 North Mannheim Road, Rosemont, IL 60018.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-5767.

Purpose of the parent board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the panel: The Chemistry Review Panel is a subgroup of ERAB and reports to the parent Board. The Chemistry Review Panel will review the National Research Council's report, "Opportunities in Chemistry" and, in particular, assess its specific suggestions for initiatives that are recommended for the Department of Energy.

Tentative Agenda

December 18, 1985

- A discussion of the National Academy of Sciences report, "Opportunities in Chemistry" and briefings from representatives of the Department of Energy's National Laboratories, and from the university and industry communities.
- Public Comment—(10 minute rule)

December 19, 1985

- Discussion by the Panel of its preliminary findings and report drafting sessions.
- Public comment—(10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 20, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85-28143 Filed 11-25-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Implementation of Special Refund Procedures; Jimmy's Gas Stations, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $6,275 obtained as a result of a consent order which the DOE entered into with Jimmy's Gas Stations, Inc., a reseller-retailer of petroleum products located in Auburn, Maine. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0102.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $6,275 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Jimmy's Gas Stations, Inc. (Jimmy's). The funds were provided to the DOE by Jimmy's to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period November 2, 1973 through May 4, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased No. 2 heating oil and diesel fuel from Jimmy's. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Jimmy's and to demonstrate that it was injured by Jimmy's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of products purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: November 19, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

November 19, 1985

Name of Firm: Jimmy's Gas Stations, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0102.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of

Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Jimmy's Gas Stations, Inc. (Jimmy's).

I. Background

Jimmy's is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Auburn, Maine. A DOE audit of Jimmy's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 2, 1973 and May 4, 1974, Jimmy's overcharged by $6,275 in its sales of No. 2 heating oil and diesel fuel.

In order to settle all claims and disputes as to the firm's sales of No. 2 heating oil and diesel fuel during the audit period, Jimmy's and the DOE entered into a consent order on May 12, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent order also states that Jimmy's does not admit to any violations of the regulations.

Under the terms of the consent order, Jimmy's was required to deposit $6,275 into an interest bearing escrow account for ultimate distribution by the DOE. Jimmy's remitted this sum on August 25, 1981.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding, 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify those persons who might have been injured by the alleged overcharges or to readily ascertain the amount of any such injury. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that this proceeding should consist of two stages. In the first stage, we will consider claims of identifiable purchasers of refined petroleum products that may have been injured by Jimmy's pricing practices during the consent order period, November 2, 1973 through May 4, 1974. After all meritorious first-stage claims have been paid, any remaining funds may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Jimmy's refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Jimmy's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process at a reasonable cost and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. As a separate matter, we are making a proposed finding that ultimate consumers of Jimmy's products were injured by Jimmy's' pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant that believes that it absorbed a disproportionate amount of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Jimmy's times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0060 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by Jimmy's pricing practices. There are a number of bases for such a presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore experienced some impact of the alleged overcharges. Under the small-claims presumption, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain threshold level.[3]

As noted, we are proposing a finding that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, to prove injury, ultimate consumers must document only their purchase volumes.

[1] As of October 31, 1985, the Jimmy's escrow account contained $10,424, including accrued interest.

[2] This figure is derived by dividing the $6,275 settlement amount by the 1,044,836 gallons of products sold by Jimmy's during the consent order period.

[3] Due to the relatively small size of the escrow account, we will not include a detailed discussion of the threshold amount here. The usual standards for claims in excess of this $5,000 threshold are applicable here, however. For a more detailed discussion of these standards, see Texas Oil & Gas Corp., 12 DOE ¶ 85,069 (1984); Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco); and cases cited therein.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of resitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from Jimmy's. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly described the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Jimmy's Gas Stations, Inc. pursuant to the consent order executed on May 12, 1980, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-28146 Filed 11-25-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59205A; TSH-FRL 2930-4]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-1. The test marketing conditions are described below.

EFFECTIVE DATE: November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Christen Bashor, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-609, 401 M St. SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-1. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the company shall maintain the following records until five years after the date they are created, and shall make them available to EPA for inspection of copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 86-1

Date of Receipt: October 8, 1985
Notice of Receipt: October 22, 1985 (50 FR 42774)
Applicant: Confidential
Chemical: (G) Anhydride adducted with a polypropylene glycol
Use: (G) Epoxy cross-linking agent for potting, sealing, and encapsulation of electrical components.
Production Volume: Confidential
Number of Customers: Confidential
Worker Exposure: Confidential
Test Marketing Period: One year
Commencing on: November 18, 1985
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health
Public Comments: None

The Agency reserves the right to rescind approval or modigy the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk or injury to health or the environment.

Dated: November 18, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

FR Doc. 85-28158 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-2430-3]

PSD Permit Extension for the Kentucky Utilities Co., Hancock County, KY

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that a Prevention of Significant Deterioration (PSD) permit extension has been granted to the Kentucky Utilities Company. This action extends the PSD permit (PSD-KY-137) deadline for the commencement of construction of an electric utility to be located in Hancock County, Kentucky until March 5, 1986.

DATES: This action is effective as of July 24, 1985, and grants an 18-month permit extension beginning September 5, 1984, and expiring on March 5, 1986.

ADDRESSES: Copies of the request for an extension and supporting documentation are available for public inspection upon request at the following location: Environmental Protection Agency, Region IV, Air Programs Branch, Air, Pesticides, & Toxics Management Division, 345 Courtland Street NE., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson of the EPA—Region IV Air Programs Branch at the Atlanta address given above; telephone 404/881-4901, (FTS) 257-4901.

SUPPLEMENTARY INFORMATION: The Kentucky Utilities Company requested that an extension be granted for the Prevention of Significant Deterioration (PSD) construction permit for the proposed electric utility plant to be located in Hancock County, Kentucky. The extension request asked that the PSD permit for Units 1 & 2 of the facility be extended to September 1, 1987, or 3 years after final resolution of [then] pending litigation on the permit, whichever is later.

Final agency action on the PSD permit issuance was on January 21, 1983, and thus Kentucky Utilities had to commence construction within 18 months of that date (40 CFR 52.21(r)(2)), or July 21, 1984. However, the United States Court of Appeals for the Sixth District granted a Kentucky Utilities Company request that they need only commence construction by 18 months after September 5, 1984 (the date the Court of Appeals opinion was issued as a mandate), or March 5, 1986. EPA believes that an extension beyond this date is not warranted for the following reasons:

1. The original application for this source was submitted on July 26, 1978. The increment will therefore have been reserved for eight and a half years, which is contrary to the intent of the PSD regulation in preventing the reservation of air resources for long periods of time without constructing the proposed source (40 CFR 52.21(r)(2)).

2. The Kentucky Public Service Commission reported that it was doubtful that the investment in the Hancock County facility will ever be used or useful in providing services.

3. Alternative sources for utilities are available, such as the purchase of an existing nearby utility no longer needed by a neighboring electric utility company.

4. The highest State authority commenting stated that close consideration should be given to local concerns, and unanimous local opposition to the proposed Hancock County facility was voiced at the PSD public hearing and through written comments.

Therefore, to prevent the PSD approval from becoming invalid, Kentucky Utilities must commence construction on Unit 1 of the Hancock County facility by March 5, 1986, and commence construction of Unit 2 and 18 months later, September 5, 1987. Construction on either of the units may not be discontinued for a period of 18 months or more, and construction must be completed within a reasonable time.

(Secs. 160-169 of the Clean Air Act (42 U.S.C. 7470-7479))

Dated: November 8, 1985.

Howard D. Zeller,

Acting Regional Administrator.

[FR Doc. 85-28159 Filed 11-25-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-443]

Hobart Federal Savings and Loan Association, Hobart, IN; Final Action Approval of Conversion Application

Dated: November 20, 1985.

Notice is hereby given that on June 27, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Hobart Federal Savings and Loan Association, Hobart, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46206.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-28168 Filed 11-25-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C., 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, D.C. 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 communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000150-081.

Title: Trans-Pacific Freight Conference of Japan.

Parties:

American President Lines, Ltd.
Barber Blue Sea Line
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit members to follow the independent actions of other members identically or partially with effectiveness within the original notice period. It would also enable any member to cancel its independent action in part. The parties have requested a shortened review period.

Agreement No.: 202-003103-082.

Title: Japan-Atlantic and Gulf Freight Conference.

Parties:

Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit members to follow the independent actions of other members identically or partially with effectiveness within the original notice period. It would also enable any member to cancel its independent action in part. The parties have requested a shortened review period.

Agreement No.: 224-004140-002.
Title: Okland Terminal Agreement.
Parties:
Port of Oakland (Port)
Marine Terminals Corporation (MTC)

Synopsis: This agreement modifies the basic agreement between the parties whereby the Port assigned the management of terminal facilities in the Port's Ninth Avenue Terminal area to MTC. The amendment provides for the possibility of MTC handling combination steel and container vessels off the assigned premises at the Seventh Street Public Container Terminal because of the limitations of the Ninth Avenue Terminal facility with respect to the handling of containers. The agreement will also provide for application of its compensation factors to the handling of said cargo and vessels at the Port terminal facilities. The parties should replace the compensation provisions of the agreement in effect on or after November 12, 1985, and the Port will refund to MTC any differences following the effective date of the agreement.

Agreement No.: 203-007970-007
Title: Pacific Coast Committee of Inward Trans-Pacific Steamship Lines
Parties:
American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Barber Blue Sea
Japan Line, Ltd.
A.P. Moller-Maersk Line
Nippon Yusen Kaisha
Sea-Land Service, Inc.
United States Lines, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the agreement to delete Hapag-Lloyd AG as a party to the agreement.

Agreement No.: 202-009831-005.
Title: New Zealand/U.S. Atlantic and Gulf Shipping Lines Agreement
Parties:
Associated Container Transportation (Australia), Ltd.
Columbus Line

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 202-010012-007.
Title: Australia-Pacific Coast Rate Agreement.
Parties:
Pacific-Australia Direct Line
Columbus Line

Synopsis: The proposed amendment would permit the parties to discuss and agree on rationalization of sailings and would extend the notice period for independent action from seven days to ten. It would also restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 202-010252-002.
Title: New Zealand-Pacific Coast Rate Agreement.
Parties:
Blue Star Line, Ltd.
Columbus Line

Synopsis: The proposed amendment would permit the parties to assume jurisdiction over service contracts and would permit the parties to discuss and agree on rationalization of sailings. It would also restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 202-010268-006.
Title: Australia/Eastern U.S.A. Freight Conference.
Parties:
Atlanttrafik Express Service, Ltd.
Columbus Line
Pacific America Container Express

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format. It would also make certain administrative changes in the agreement and would clarify and expand somewhat the authority of the conference.

Agreement No.: 207-010482-002
Title: Italia-d'Amico Joint Service Agreement
Parties:
Italia di Navigazione S.p.A.
d'Amico Societa di Navigazione per Azioni

Synopsis: The proposed amendment would modify the scope of the agreement to clearly reflect that the joint service may provide service to/from port areas, in addition to inland points, via ports on the Mediterranean and Black Seas and the Atlantic Coast of Spain, Morocco and Portugal. It would increase the vessel and TEU limitations to five vessels and 5,600 TEU's and delete the expiration date and reporting requirements from the agreement. It would also restate the agreement to conform with the Commission's format, organization and content requirements.

By Order of the Federal Maritime Commission.

Dated: November 21, 1985.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85-28182 Filed 11-25-85; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Valencia Shipping Agencies, Inc., San Miguel Bldg., Kennedy Avenue, c/o G.P.O. Box 2409, San Juan. PR 00936. Officers: Alfonso Valencia, President; Wallace Valencia, Vice President

Nakano Warehouse & Transportation Corp., 18924 S Laurel Park Road, Compton, CA 90220. Officers: Shin Kobayashi, President; Charles Edward Klingforth, Assistant Vice President; Richard E. Santiestevan Assistant Vice President

Seabreeze Forwarding, Inc., 5415 SW 128th Place, Miami, FL 33175. Officers: Laurie Briner, President; Mark Briner, Director

Elite Transportation, 18306 Lazy , Moss Lane, Spring, TX 77379. Officers: Howard Leff, President/Director; Mark Kaifesh, Secretary/Director

Aries International, Inc., 182-16 149th Road, Jamaica, NY 11413. Officers: Frank G. D'Ambra, President; Robert D. Pedalino, Secretary/Treasurer

Carina Logistics A division of Carina Enterprises, Inc., 1520 State Street, Suite 231, San Diego, CA 92101. Officers: Katherine J. Segall, President/Director; Heinz J. Houben, Vice President/Director

General Traffic Systems, Inc., 175-01 Rockaway Blvd., Jamaica, NY 11434. Officer: Chae Jung Kim, President

By the Federal Maritime Commission.

Dated: November 21, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 28181 Filed 11-25-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Adbank; Formation of: Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than December 19, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ADBANK (formerly First Security Corporation),* Ogallala, Nebraska, parent company to First Security Bank, Sutherland, Nebraska; to merge with each of the following bank holding companies; Chase County Corporation, Ogallala, Nebraska, thereby acquiring Chase County Bank and Trust Company, Imperial, Nebraska; and Adco, Ogallala, Nebraska, thereby acquiring Bank of Brule, Brule, Nebraska. Applicant has also applied to acquire Adams Bank and Trust (formerly Keith County Bank and Trust), Ogallala, Nebraska, and Security State Bank, Madrid, Nebraska.

Board of Governors of the Federal Reserve System, November 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR. Doc. 85-28109 Filed 11-25-85; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, 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 December 16, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.,* Philadelphia, Pennsylvania; to merge with IVB Financial Corporation, Philadelphia, Pennsylvania, thereby indirectly acquiring Industrial Valley Bank, Philadelphia, Pennsylvania.

2. *Fulton Financial Corporation,* Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of Swineford National Bank, Middleburg, Middleburg, Pennsylvania. Comments on this application must be received not later than December 18, 1985.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Acadiana Financial Services, Inc.,* Lafayette, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Acadiana National Bank, Lafayette, Louisiana. Comments on this application must be received not later than December 18, 1985.

2. *FNS Bancshares, Inc.,* Scottsboro, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of: The First National Bank, Scottsboro, Alabama and Northeast State Bank of Alabama, Henegar, Alabama.

3. *Tattnall Bancshares, Inc.,* Reidsville, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of The Tattnall Bank, Reidsville, Georgia. Comments on this application must be received not later than December 13, 1985.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CSB Investors,* Cobb, Wisconsin; to become a bank holding company by acquiring 93.4 percent of the voting shares of Cobb State Bank, Cobb, Wisconsin.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Capital National Bancshares, Inc.,* Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of: Capital National Bank, Fort Worth, Texas and The Citizens National Bank of Weatherford, Weatherford, Texas.

Board of Governors of the Federal Reserve System, November 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85- Filed 11-25-85; 8:45 am]

BILLING CODE 6210-01-M

St. James Bancorp, Inc., Correction

This notice corrects a previous **Federal Register** document (FR Doc. No.

85-25306), published at page 43004 of the issue for Wednesday, October 23, 1985. The name of the company is Roseville Bancorp, Inc., Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, November 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28111 Filed 11-25-85; 8:45 am]

BILLING CODE 6210-01-M

Formation of: Acquisition by; or Merger of Bank Holding Companies; Bank of New England Corp.

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)).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications 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 of Boston 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.

Comments regarding this application must be received not later than December 6, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation,* Boston, Massachusetts; to acquire, through its wholly-owned subsidiary, OCB Holding Corporation, Boston, Massachusetts, 100 percent of the voting shares of the successor to Old Colony Bank, Providence, Rhode Island.

1Board of Governors of the Federal Reserve System, November 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28334 Filed 11-25-85; 9:15 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0274]

Retrospective Review of the Performance Standard for Diagnostic X-Ray Equipment; Availability of Report

Correction

FR Doc. 85-26832 was published in the Rules and Regulations section on page 46646 in the issue of Tuesday, November 12, 1985. It should have appeared in the Notices section of the issue.

BILLING CODE 1505-02-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of Portions of Two Virginia State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on January 15, 1986 in Philadelphia, Pennsylvania to reconsider our decision to disapprove Virginia State Plan Amendments 84-13 and 84-15.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk December 11, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove portions of two Virginia State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issues in this matter are: (1) Whether Virginia State Plan Amendment 84-13, which attempts to implement changes with regard to treatment of non-real property for purposes of eligibility for Medicaid violates section 1902(a)(10)(C)(i)(III) of the Social Security Act and (2) whether Virginia State Plan Amendment 84-15, which proposes requirements relating to financial (resource) eligibility under Medicaid, violates section 1902(f) of the Social Security Act and regulations at 42 CFR 435.121, and therefore violates section 1902(a)(10) of the Act.

Virginia State Plan Amendment 84-13

Section 301 of State Plan Amendment 84-13 deals with treatment of real property as a resource for the AFDC-related medically needy. By using cross-references to other sections of the State plan, the State has attempted to apply uniform criteria, including some that should apply only to SSI-related recipients, to all medically needy individuals. The State maintains that this policy is protected under the moratorium imposed by section 2373(c) of the Deficit Reduction Act of 1984. We believe that the moratorium only precludes the Department from taking action against States with regard to certain policies which are part of the State's approved Medicaid plan and does not protect new amendments. In a request for additional information, HCFA asked the State to document that this policy was in fact in the State plan. In its response, the State continued to maintain that this policy was previously in effect but offered no additional documentation. Therefore, HCFA determined that section 301 of Virginia State Plan Amendment 84-13 is in violation of the requirement that States use the methodology applicable to the most appropriate cash assistance program in determining eligibility for the medically needy per section 1902(a)(10)(C)(i)(III).

Virginia State Plan Amendment 84-15

Virginia is a 209(b) State, meaning that it may use more restrictive eligibility criteria for Medicaid than are used by the Supplemental Security Income (SSI) program. States are

generally obligated to provide Medicaid to all SSI recipients under section 1902(a)(10)(A) of the Social Security Act and to use SSI criteria for their aged, blind and disabled medically needy under section 1902(a)(10)(C). However, section 1902(f) of the Social Security Act and 42 CFR 435.121 permit a 209(b) State to deviate from these requirements. They authorize a 209(b) State to use criteria for its aged, blind and disabled, which are more restrictive than those used by SSI as long as those criteria are not more restrictive than those in the State's January 1, 1972 State plan. Virginia 84-15 contains a resource requirement on how the home of an institutionalized person counts in determining that person's resources which HCFA believed to be more restrictive than the requirement contained in the State's January 1, 1972 Medicaid State plan. The State's 1972 State Medicaid plan did not count the home as a resource if the "family unit" of the institutionalized person continue to reside there nor did it require a physician's certification that the individual was expected to return home. The proposed amendment would modify the "family unit" exclusion by requiring a 1-year prior occupancy and would add a physician certification requirement. Therefore, HCFA has determined that Virginia State Plan Amendment 84-15 is in violation of section 1902(f) of the Act and regulations at 42 CFR 435.121.

The notice to Virginia announcing an administrative hearing to reconsider our disapproval of portions of its State plan amendments reads as follows:

Mr. Ray T. Sorrell
Director, Commonwealth of Virginia, Department of Medical Assistance Services, 109 Governor Street, Suite 500, Richmond, Virginia 23219

Dear Mr. Sorrell: This is to advise you that your request for reconsideration of the decision to dissaprove portions of Virginia State Plan Amendments 84-13 and 84-15 were received on October 24, 1985 and October 28, 1985. You have requested a reconsideration of whether the plan amendments conform to the requirements for approval under the Social Security Act and pertinent Federal regulations.

I am scheduling a hearing on your request to be held on January 15, 1986 at 10 a.m., in Room 3020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

C. McClain Haddow,
Acting Administrator.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 20, 1985.

C. McClain Haddow,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-28134 Filed 11-25-85; 8:45 am]

BILLING CODE 4120-01-M

Medicaid Program; Compliance Hearing: State of Oregon Failure To Implement Lynch v. Rank Court Decision

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Compliance Hearing.

SUMMARY: This notice announces a compliance hearing on January 8, 1986, in Seattle, Washington, to consider our decision to find the State of Oregon out of compliance with section 503 of Pub. L. 94-566 and sections 1902(a)(4), 1902(a)(8), and 1902(a)(19) of the Social Security Act for its failure to implement the *Lynch v. Rank* court decision.

DATE: Requests to participate in the compliance hearing as a party must be received by December 11, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces a compliance hearing to determine whether the State of Oregon, in the administration of its plan, has failed to comply substantially with the provisions of section 503 of Pub. L. 94-566, the "Pickle amendment," and sections 1902(a)(4), 1902(a)(8), and 1902(a)(19) of the Social Security Act. We have preliminarily found that Oregon has failed to follow the Action Transmittals approved by the court in *Lynch v. Rank*, Civil Action No. 83-2340 (N.D. Cal.) which are necessary to effectuate the court's interpretation of the Pickle amendment.

Section 1904 of the Social Security Act and 45 CFR Parts 201.6 and 213 establish Department procedures that provide a compliance hearing for consideration of a finding that a State plan no longer complies with the provisions of section 1902 of the Social Security Act. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter arises from the State's alleged failure to identify and notify certain individuals who would have been eligible under the court's interpretation of the amendment, and the State's alleged failure to establish a prospective system of annual review of new potential Pickle eligibles. These failures arguably would violate the Pickle amendment, section 503 of Pub. L. 94-566 as interpreted by the court in *Lynch*. In this context, the State has arguably failed to provide methods of administration necessary for the efficient operation of the State plan, which provide all individuals the opportunity to apply for medical assistance, and to establish such safeguards as may be necessary to assure that eligibility for medical assistance will be determined in a manner consistent with simplicity of administration and the best interest of recipients.

Section 503 of Pub. L. 94-566 (the Pickle amendment) protects categorical Medicaid eligibility for certain recipients of title II Social Security benefits who have lost eligibility for Supplemental Security Income (SSI) benefits. The Department of Health and Human Services originally interpreted the statute to protect Medicaid eligibility only for those individuals who lost SSI benefits solely as a result of receiving a title II cost of living increase (COLA).

However, in 1980, the U.S. District Court in Massachusetts, in *Ciampa* v. *Secretary of Health and Human Services*, held that the Department's interpretation was incorrect. According to the *Ciampa* decision, the Pickle amendment did not provide for a "solely" test, but rather required a "but

for" test; i.e., the law protects categorical eligibility of the individuals in question if they would be eligible for SSI "but for" title II cost of living increases received since they last were eligible for (and received) SSI and title II concurrently, regardless of the reason that they lost SSI benefits. The First Circuit Court of Appeals affirmed the District Court's opinion. As a result of the decision in the *Ciampa* case, the "but for" test under the Pickle amendment was implemented in Massachusetts, and the "solely" test was maintained in the rest of the States.

A second suit (*Lynch* v. *Rank*) challenging the Department's interpretation of the Pickle amendment was filed in the U.S. District Court, Northern District of Calfifornia. The court found for the plaintiffs in this suit, and in addition certified a nationwide class and ordered the Department to implement the Court's decision on a nationwide basis. Therefore, as a result of the Court's ruling in this case, the "solely" test previously used to determine whether a Medicaid recipient was protected under the Pickle amendment was to be replaced with a "but for" test in all States. The Ninth Circuit Court of Appeals affirmed the District Court's decision.

The Health Care Financing Administration (HCFA) issued four Program Instructions (Medicaid Action Transmittals No. 84-10 and No. 84-16 and Program Memorandum No. 85-4 and No. 85-10) advising States of the Court's decision and actions required by States to implement the various requirements ordered by the U.S. District Court, Northern District of California in the case of *Lynch* v. *Rank*.

Medicaid Action Transmittal No. 84-10 implemented the Court's order of July 17, 1984. It—

- Clarified the "but for" test.
- Instructed States to provide notification to affected recipients, by displaying posters in welfare offices.
- Provided an effective date for implementation of the "but for" test (i.e., March 9, 1984).
- Instructed States to conduct a one-time review of open Medicaid medically needy cases.
- Instructed States to implement an annual review system.
- Clarified regulations at 42 CFR 435.135.
- Instructed States to submit reports to HCFA within specified periods of time.

Medicaid Action Transmittal No. 84-16 set forth the process for notification of affected recipients.

Program Memorandum No. 85-4 set for the method for computing the title II cost of living increases.

Program Memorandum No. 85-10 implemented the Court's bench order of June 21, 1985 by again setting forth the State's obligations to implement the Court's order and to provide the Court with periodic reports regarding the State's implementation of the order.

While Oregon has taken some actions to implement parts of the court decision, HCFA has preliminarily determined that Oregon has not complied with the U.S. District Court order that each member of the national class certified by the Court as being affected by the *Lynch v. Rank* decision be notified of the decision and that he or she may be eligible for categorical Medicaid eligibility under the broadened interpretation of the Pickle amendment ordered by the Court.

Additionally, HCFA has preliminarily determined that Oregon has not complied with the U.S. District Court order that requires that the State implement an annual review system to identify individuals potentially affected by the decision on an ongoing basis.

Since the court decision invalidated our regulation at 42 CFR 435.135 with respect to a nationwide class, HCFA and the States are bound by the statute and the Court's interpretation of it. Since HCFA has preliminarily determined that Oregon has refused to comply with the statute as interpreted by the court it is out of compliance with section 503 of Pub. L. 94-566 and sections 1920(a)(4), 1902(a)(8), and 1902(a)(19) of the Social Security Act.

The notice to Oregon announcing a compliance hearing to consider our decision to find the State of Oregon out of compliance with section 503, of Pub. L. 94-566 and sections 1902(a)(4), 1902(a)(8) and 1902(a)(19) of the Social Security Act for its failure to implement the *Lynch* v. *Rank* court decision reads as follows:

Leo Hegstrom, Director;
Department of Human Resources; 318 Public Service Building; Salem, Oregon 97310

Dear Mr. Hegstrom: This is to advise you that the Health Care Financing Administration has preliminarily determined that Oregon has failed to implement the U.S. Court's decision in the case of *Lynch* v. *Rank*. Failure to implement the Court's decision has resulted in the State being out of compliance with section 503 of Pub. L. 94-566, and sections 1902(a)(4), 1902(a)(8),and 1902(a)(19) of the Social Security Act (the Act).

Therefore, in accordance with the requirements of section 1904 of the Act and the implementing regulations at 45 CFR 201.6 and 45 CFR 213, I am scheduling a hearing on this determination to be held on January 8, 1986, in Room 180, 2901 Third Avenue, Seattle, Washington 98121. The hearing will begin at 10:00 a.m.

I am designating Mr. Lawrence Ageloff, as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

C. McClain Haddow,

Acting Administrator.

(Section 1904 of the Social Security Act)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: November 22, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-28331 Filed 11-22-85; 4:56 pm]

BILLING CODE 4120-01-M

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Transillumination Light Scanning (Diaphanography) in Detection of Breast Cancer

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of the safety, clinical effectiveness, and indications for Transillumination Light Scanning (diaphanography) as a complementary procedure to mammography in the detection of cancer and other diseases in the breast. Specifically, this assessment seeks to determine whether data exist to support a coverage determination regarding the safety and clinical effectiveness of diaphanography as an adjunctive procedure in patients who have suspicious but not unequivocally positive mammograms, and in patients with dense breasts or with fibrocystic disease who have equivocal mammograms. Identification of other possible patient subgroups in which this technology may be applicable will also be of interest. This assessment specifically will not include the evaluation of Transillumination Light Scanning for breast cancer screening.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety

and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than 90 days from the date of publication of this notice.

The information being sought is a review and evaluation of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies, information related to the clinical acceptability and effectiveness of this technology, and a characterization of the patient population most likely to benefit from it. Proprietary information is not being sought.

Written material should be submitted to: Richard S. Bodaness, M.D., Ph.D., National Center for Health Services Research, and Health Care Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4990.

Dated: November 19, 1985.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-28185 Filed 11-25-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M 60998]

Public Lands; Opening Order and Notice; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Land in Phillips County, in Montana.

SUMMARY: This order opens lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq., to the operation of the public land laws. Its also informs the public and interested state and local governmental officials of the issuance of the conveyance documents. No minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on January 8, 1986, the lands reconveyed to the United States will be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange, by the Notice of Realty Action published in the **Federal Register** on July 16, 1985, (50 FR 28844-28845). The segregation terminated on issuance of the patent and quitclaim deed on September 10, 1985.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to Larry Matthews and Dewain Matthews:

Patent 25-85-0586:

Principal Meridian, Montana

T. 29 N., R. 27 E.,
Sec. 8, W½NE¼.
T. 33 N., R. 28 E.,
Sec. 25, SE¼SE¼.
T. 26 N., R. 30 E.,
Sec. 4, lots 3 and 4, SE¼NW¼.
T. 27 N., R. 30 E.,
Sec. 1, SW¼MW¼.
T. 27 N., R. 31 E.,
Sec. 4, SE¼SW¼.

Patent acreage: 323.09.
Quitclaim Deed MT 85-011.

Principal Meridian, Montana

T. 36 N., R., 24 E.,
Sec. 21, N½.
T. 32 N., R. 26 E.,
Sec. 3, S½NW¼.
T. 29 N., R. 27 E.,
Sec. 12, E½, N½NW¼, S½N½SW¼, S½SW¼.
T. 30 N., R. 27 E.,
Sec. 26, SW¼;
Sec. 35, NW¼.
T. 31 N., R. 27 E.,
Sec. 28, SW¼SE¼;
Sec. 33, NW¼NE¼.
T. 32 N., R. 27 E.,
Sec. 20, NE¼.
T. 26 N., R. 28 E.,
Sec. 11, E½SE¼;
Sec. 12, S½.
T. 30 N., R. 28 E.,
Sec. 4, lots 3 and 4;
Sec. 5, lots 1, 2, 3, S½NE¼, SE¼NW¼.
T. 31 N., R. 28 E.,
Sec. 32, lot 4;
Sec. 33, lot 1, NW¼SW¼.
T. 35 N., R. 28 E.,
Sec. 14, S½NE¼, E½SW¼, SE¼.
T. 26 N., R. 29 E.,
Sec. 19, lots 3 and 4, S½NE¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 20, W½SW¼.
T. 32 N., R. 29 E.,
Sec. 6, lots 3, 4, 5, 6, 7, SE¼NW¼, E½SW¼,
T. 29 N., R. 30 E.,
Sec. 20, S½SW¼.
T. 27 N., R. 31 E.,
Sec. 18, lots 1 and 2, W½NE¼, E½NW¼.
T. 36 N., R. 32 E.,
Sec. 15, S½SW¼;
Sec. 22, S½NW¼, SW¼.
T. 37 N., R. 32 E.,
Sec. 7, E½E½;
Sec. 22, SW¼, W½SE¼;
Sec. 27, W½E½, SW¼;
Sec. 28, E½SE¼;
Sec. 29, SW¼.

Deeded land acreage: 4,956.46.
Total acreage transferred: 5,279.55 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Phillips County, Montana:

Tract A:

Pirncipal Meridian, Nontana

T. 29 N., R. 32 E.,
Sec. 8, E½E½;
Sec. 9, all;
Sec. 10, SE¼NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 11, SW¼NW¼, NW¼SE¼;
Sec. 14, NE¼, SE¼NW¼, NE¼SE¼;
Sec. 15, E½SW¼;
Sec. 20, N½NE¼
Sec. 21, N½, NE¼SW¼, NW¼SE¼;
Sec. 22, NE¼NW¼, S½N½;
Sec. 23, SW¼NW¼.

Containing 2,400 acres.

Tract B:

Principal Meridian, Montana

T. 30 N., R. 32 E.,
Sec. 33, E½E½;
Sec. 34, NE¼SE¼; and
Sec. 35, N½SW¼.

Containing 280 acres.

Tract C:

T. 29 N., R. 32 E.,
Sec. 2, S½NW¼, SW¼;
Sec. 3, S½NE¼, SE¼;
Sec. 10, N½NE¼, SW¼NE¼, SE¼SE¼;
Sec. 11, NW¼NW¼, S½S½;
Sec. 13, SW¼SW¼;
Sec. 14, N½NW¼, SW¼NW¼, SW¼, W½SE¼; SE¼SE¼;
Sec. 15, N½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 23, NE¼, N¼NW¼, SE¼NW¼, N½SW¼, NW¼SE¼;
Sec. 24, NW¼NW¼.

Containing 1,880 acres, more or less.
Total acreage acquired: 4,560 acres.

3. The values of Federal public land and the non-Federal land in the exchange were appraised at $500,400 and $499,000 respectively. A $1,400 cash equalization payment was made to the United States.

4. At 9 a.m. on January 8, 1986, the lands described in paragraph 2 above

will be open to the operation of the public land laws.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

November 15, 1985.

[FR Doc. 85-28141 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-DN-M

[W-80207]

Order Providing for Opening of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Order providing for opening of public lands in Uinta County, Wyoming.

SUMMARY: This order opens certain lands segregated from all forms of appropriation under the public land laws, including the mining laws, by Application for Airport Lease W-80207 filed April 22, 1982, by the Uinta County Commission under the Act of May 24, 1928, 49 U.S.C. 211-214 (1982), as amended, pursuant to 43 CFR Subpart 2911.

DATE: At 10:00 a.m. on December 16, 1985, the lands below will be open to operation of the public land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received on or prior to 10:00 a.m. on December 16, 1985, shall be considered simultaneously filed at that time. Applications received thereafter shall be considered in the order of filing.

Sixth Principal Meridian, Wyoming

T. 16 N., R. 115 W.,
Sec. 6, lots 1, 14, NE¼SE¼;
Sec. 7, NE¼.

Excepting from the above lands, a tract of land located in the SE¼ of sec. 6 and in the NE¼ of sec. 7 as shown on the plat entitled *Property Survey For Fort Bridger Airport* dated December 7, 1984 (revised), containing 34.03 acres, more or less, and described as follows:

Beginning at the NE Corner of said sec. 7: thence S.00°00'00"W., 490.67 feet along the East Line of said sec. 7; thence S.54°36'33"W., 1715.83 feet; thence N.35°23'27"W., 500.00 feet; thence N.54°36'33"E., 300.00 feet; thence N.03°50'43"W., 352.03 feet; thence N.54°36'33"E, 1800.00 feet to a point that lies on the E. Line of said sec. 6; thence S.00°00'00"W., 490.67 feet along said East Line to the Point of Beginning.

The lands opened by this order aggregate 205.91 acres, more or less.

FOR FURTHER INFORMATION CONTACT: District Manager, Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902-1869.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 85-28139 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-2-M

[Serial No. C-40247]

Exchange of Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; determination of land suitable for exchange under the authority of sections 205, 206, 302(b), and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732, and 1740).

SUMMARY: Approximately 6,530 acres of public land under the jurisdiction of the Bureau of Land Management have been determined suitable for exchange. The determination of suitability has been made in response to a Bureau-benefiting three-way exchange proposal developed cooperatively between the Bureau, the Colorado Division of Wildlife (CDOW) and Mr. J. Golden Bair. In the proposal, the Bureau, CDOW and J. Golden Bair have offered to exchange a total of approximately 13,200 acres. The exchange proposal has been made to facilitate the consolidation of all entities' land holdings. The consolidation would increase managerial efficiency and the public values of natural resources found on the land being considered for exchange by the Bureau and CDOW.

The values of the land to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the land, the acreages will be adjusted or money will be used to equalize all the exchange values. Adjustments in offered CDOW property acres to equalize the values exchanged is expected to occur within the Missouri Creek Wildlife Area or the southern end of BLM selected land at Garfield Creek.

The following describes the land proposed and determined suitable for exchange.

Selected Public Land

Garfield Creek Properties—3559.72 Acres—Garfield County, Colorado

Sixth Principal Meridian, Colorado

T. 6 S., R. 91 W.,
Sec. 3: Lot 1, 2, S½NE¼, SE¼NW¼, SW¼SW¼, N½SE¼, SE¼SE¼;
Sec. 4: SE¼SE¼;
Sec. 9: E½E½;
Sec. 10: N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 11: SW¼NE¼, NW¼NW¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 12: SW¼SW¼;
Sec. 13: NW¼, W½SW¼;
Sec. 14: N½NE¼, SE¼NE¼, S½;
Sec. 15: W½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 16: SE¼NW¼, SW¼SE¼;
Sec. 23: NW¼NE¼, S½NE¼, N½NW¼;
Sec. 24: NW¼SE¼;
*Sec. 25: SE¼SE¼;
Sec. 34: NE¼NE¼;
*Sec. 36: E½E½, SW¼NE¼, NW¼SE¼.

T. 7 S., R. 91 W.,
*Sec. 1: Lot 1, SE¼SW¼, SE¼SE¼;
*Sec. 12: NE¼NE¼, E½NW¼.

*Acres subject to deletion to equalize values.

These properties are located south of New Castle, Colorado, generally between Garfield Creek and Alkali Creek and County Roads 312 and 314. They are proposed to be exchanged for Division properties in the Dotsero Wildlife Area and at the Loma Launch Site.

Radium Properties—1944.24 Acres—Grand County, Colorado

Sixth Principal Meridian, Colorado

T. 1 S., R. 81 W.,
Sec. 19: SE¼SE¼;
Sec. 20: Lot 1.

T. 1 S., R. 82 W.,
Sec. 19: Lots 6, 7, 8, 9, SE¼SE¼;
Sec. 21: Lots 1, 2, N½SW¼;
Sec. 27: NW¼SE¼;
Sec. 29: Lots 1, 2;
Sec. 30: Lots 6, 7, 8, 9.

T. 1 S., R. 82 W.,
Sec. 3: Lots 6, 7, 8, 9, SW¼SE¼;
Sec. 10: E½, SE¼NW¼, NE¼SW¼;
Sec. 11: Lot 2;
Sec. 14: SW¼SW¼;
Sec. 15: E½;
Sec. 17: Lots 1, 2, 3, 4, 5, E½NW¼, SW¼SE¼;
Sec. 20: Lots 1, 2, 3, 4, NE¼NE¼;
Sec. 22: N½NE½, SW¼NE¼;
Sec. 23: NW¼NW¼.

These properties are isolated Bureau land within or adjacent to Division properties near Radium, Colorado. They are proposed to be exchanged for Division Radium properties.

Cottonwood Creek Properties—1037.08 Acres—Garfield, County, Colorado

Sixth Principal Meridian, Colorado

T. 5 S., R. 86 W.,
Sec. 19: Lots 13, 14;
Sec. 20: Lots 2, SW¼,NE¼SW¼, S½SE¼NE¼SW¼;
Sec. 29: Lots 4, 9, 12, 14;
Sec. 31: Lots 8, 9, N½NE¼, SW¼NE¼, E½E½NW¼, E½W½E½NW¼;
Sec. 32: Lots 1, 7, 8, SE¼NE¼.

T. 5 S., R. 87 W.,
Sec. 15: Lot 16;
Sec. 24: S½S½NE¼, S½SE¼NW¼, NE¼SW¼, N½SE¼;

Sec. 25: W½W½SE¼, E½E½SW¼;
Sec. 36: Lots 1, 2, W½NW¼SW¼.

These properties are near the east end of Glenwood Canyon. They are parcels of public land intermingled with private ownership. They are proposed to be exchanged for private land near Garfield Creek and subsequently to be exchanged with the private property going to the Division and the Division property going to the Bureau.

Offered Private Land—J. Golden Bair

Garfield Creek Properties—1080.00 Acres—Garfield County, Colorado

Sixth Principal Meridian, Colorado

T. 6 S., R. 91 W.,
Sec. 2: E½SW¼, W½SE¼, SE¼SE¼;
Sec. 10: SE¼SE¼;
Sec. 11: N½NE¼, SE¼NE¼, NE¼NW¼, S½S½, NE¼SE¼;
Sec. 12: W½NW¼, N½SW¼, SE¼SW¼;
Sec. 14: SE¼NE¼, NW¼;
Sec. 15: E½NE¼.

This property is private land located north of Bureau land at Garfield Creek proposed for exchange with the Division. The Bureau Cottonwood Creek properties would be exchanged for this private land.

Offered Colorado Division of Wildlife Land

Dotsero Properties—2509.76 Acres—Garfield County, Colorado

Sixth Principal Meridian, Colorado

T. 3 S., R. 86 W.,
Sec. 6: Lots 24, 25, 26, 27, 30, 31, 32, 33, 34, 35,36, 37;
Sec. 7: Lots 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, SW¼NE¼, W½SE¼;
Sec. 18: Lots 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, NW¼NE¼;
Sec. 19: Lot 9.

Tracts 44, 45, & 46: (previously described as sec. 18: Lot 2, E½SW¼, SE¼NW¼ and sec. 19: Lot 3, E½NW¼, NE¼SE¼).

Tracts 47 & 48 (previously described as sec. 20: E½NE¼; sec. 21: S½NW¼, SE¼SE¼; sec. 22: SW¼SW¼; sec. 27: N½NW¼).

T. 3 S., R. 87 W.,
Sec. 13: SE¼NE¼, NE¼SE¼;
Sec. 24: SE¼NE¼.

These properties are in holdings within Bureau land located approximately five miles east of Sweetwater Lake, Colorado. They are proposed to be exchanged for Bureau and private Garfield Creek properties.

George Creek Property—159.86 Acres—Garfield County, Colorado

Sixth Principal Meridian, Colorado

T. 4 S., R. 92 W.,
Sec. 5: Lots 3, 4, S½NW¼, less the west 10 acres of Lot 4 and west 10 acres of the SW¼NW¼.

This property is a parcel of land isolated between Bureau and White River National Forest land 13 miles north of Rifle, Colorado. It is proposed for exchange for Bureau and private Garfield Creek properties.

Piney Creek Property—629.21 Acres—Eagle County, Colorado

Sixth Principal Meridian, Colorado

T. 2 S., R. 82 W.,

Tracts 43 & 44 (previously described as sec. 19: Lot 4 and sec. 30: Lots 1, 2, 3, 4, E½NW¼, E½SW¼).

T. 2 S., R. 83 W.,
Sec. 25: Lots 1, 2, 3, 4, SW¼SE¼.

This property is a Division property isolated within Bureau land located one mile southeast of State Bridge, Colorado. The property is proposed to be exchanged for Bureau and private Garfield Creek properties.

Cathedral Bluffs Property—640.00 Acres—Rio Blanco County, Colorado

Sixth Principal Meridian, Colorado

T. 3 S., R. 100 W.,
Sec. 15: S½SW¼;
Sec. 16: NW¼SE¼, E½SE¼;
Sec. 21: E½NE¼, N½SE¼, SW¼SE¼;
Sec. 22: NE¼NW¼;
Sec. 28: W½NE¼, E½SW¼, NW¼SE¼.

This property is a Division property isolated within Bureau land located approximately 15 miles northeast of Douglas Pass, Colorado. It is proposed to be exchanged for Bureau and private Garfield Creek properties.

Missouri Creek Properties—2069.52—Rio Blanco County, Colorado

Sixth Principal Meridian, Colorado

T. 4 S., R. 102 W.,
*Sec. 30: Lots 5, 6, 7, 8, E½W½;
*Sec. 31: Lots 5, 6, 7, 8, E½W½.
T. 4 S., R. 103 W.,
*Tract 37.
T. 3 S., R. 103 W.,
Sec. 18: S½SE¼;
Sec. 19: E½, E½NW¼;
Sec. 20: SW¼;
Sec. 28: W½;
Sec. 29: NE½;
Sec. 33: SW¼NE¼, E½NW¼, NW¼NW¼.

*568 acres most subject to selection to equalize values in the exchange.

These are isolated Division properties surrounded by Bureau land located approximately 25 miles southwest of Rangley, Colorado. They are proposed to be exchanged for Bureau Garfield Creek and Radium properties.

Loma Property—7.22 Acres—Mesa County, Colorado

Ute Principal Meridian, Colorado

T. 1 N., R. 3 W.,
*Sec. 10: The portion of Lots 5 and 14.
*Denotes property described by Metes and Bounds descriptions.

This is a Division property which serves as a Colorado River Access point to Bureau land in Ruby Canyon, located three miles southeast of Mack, Colorado. It is proposed to be exchanged for Bureau and private Garfield Creek properties.

Radium Properties—410.74 Acres—Grand and Eagle Counties, Colorado

Sixth Principal Meridian, Colorado

T. 1 S., R. 82 W.,
Sec. 22: NE¼SE¼;
Sec. 23: W½SW¼;
*Sec. 27: A portion of N½NW¼;
Sec. 28: NE¼NE¼.

*The portion of Tract 53 west of the river centerline.
*The Bona Dea Placer Mining Claim:
(within T. 1 S., R. 82 W., sec. 33 and T. 2 S., R. 82 W., sec. 4 and 5)
*Denotes property described by Metes and Bounds description.

These are isolated Division properties located within or adjacent to Bureau land north and south of Radium, Colorado, along the Colorado River. They are proposed to be exchanged for Bureau Radium properties.

Terms and Conditions

The following reservations for existing uses and users would be made in a patent issued for the public land.

The following reservations would be including for all public land:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1980 (43 U.S.C. 945).

2. A reservation of all mineral deposits in the land.

Garfield Creek Selected Public Land:

1. Oil and Gas leases: C–37202, C–27852, C–20830, C–37203, C–27854, C–36479, C–36947
2. Powerline & Telephone ROWs: C–34158, C–35161, C–030996, C–24388
3. Access Road ROW: C–36763
4. Garfield County Road ROWs: C–40241, Roads 312 and 314
5. Grazing Permits 8218 and 8219—unless waived

Cottonwood Creek Selected Public Land:

1. Railroad ROW: C–093762

Radium Selected Public Land:

1. Railroad ROW: C–0122341
2. Pipeline ROW: C–9521
3. Grand County Road ROW: Road 11
4. Grazing Permits 7547 and 1114—unless waived

The publication of this notice in the **Federal Register** will segregate the public land described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Further Information and Public Comment

Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, Glenwood Springs, Colorado or the Kremmling Resource Area Office at 116 Part Avenue, Kremmling, Colorado.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 or to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. 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 the Interior.

Dated: November 13, 1985.

Dick Freel,

Associate District Manager, Grand Junction District.

[FR Doc. 85-28117 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-B-M

[W-72580, W-72586]

Wyoming; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to continue the existing withdrawals on 7,749.59 acres of the Shoshone Irrigation Project for an additional 50 years for Secretarial Order of May 2, 1919 and 20 years for Secretarial Order of May 24, 1922. The remaining acreage in the existing withdrawals will be terminated. The lands remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by February 27, 1986.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307-772-2089.

SUMMARY: The Bureau of Reclamation proposes that parts of the existing withdrawals made by Secretarial Orders of May 2, 1919, and May 24, 1922, be continued for a period of 50 years, and 20 years respectively, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands proposed for continuation for a period of 50 years are those lands in the following described subdivisions:

Sixth Principal Meridian

T. 52 N., R. 101 W.,
Sec. 9, lots 1-4;
Sec. 12, lots 1-4, E½NE¼, S½;
Sec. 14, S½;
Sec. 15, lots 1-6;
Sec. 16, lots 1-6, E½SE¼;
Sec. 21, lots 1-4, NW¼NE¼, NW¼, NW¼SW¼;
Sec. 22, lots 1-7, E½E½;
Sec. 23;
Sec. 24, E½E½, E½SW¼NE¼, E½W½SE¼;
Sec. 25, E½E½;
Sec. 26;
Sec. 27, lots 1-7, E½E½, SW¼SE¼;
Sec. 28, lots 1-3, NW¼NW¼, S½N½, S½;
Sec. 29, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 32, E½NE¼, NE¼SE¼;
Sec. 33, lot 3, W½W½;
Sec. 36, lot 1.

Lots 46-E, F, 65.

T. 52 N., R. 102 W.,
Sec. 27, lot 2, SW¼NE¼, S½NW¼, S½;
Sec. 28, lot 5, S½NE¼, N½SE¼, SE¼SE¼.

The area described contains 6,259.17 acres in Park County.

The lands proposed for continuation for a period of 20 years are those lands in the following described subdivisions:

T. 56 N., R. 100 W.,
Sec. 31, lots 3, 4, E½SE¼, SE¼;
Sec. 32.
T. 56 N., R. 101 W.,
Sec. 34, S½;
Sec. 36, lots 1-7.

The areas described contain 1,490.42 acres in Park County.

The purpose of the withdrawals is to mitigate land and water right losses from the enlargement of the authorized Buffalo Bill Reservoir Project, and for the Polecat Bench Extension, pump station and siphon. The withdrawals segregate the lands from the operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregate effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

F. William Eikenberry,

Associate State Director.

[FR Doc. 85-28140 Filed 11-25-85; 8:45 am]

BILLING CODE 3410-22-M

Minerals Management Service

Solicitation of Interest From Eligible Refiners for the Purchase of Federal Royalty Crude Oil in the Royalty-In-Kind Program

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice to Eligible Refiners Requesting Interest in the Purchase of Federal Royalty Crude Oil in the Royalty-In-Kind Program.

SUMMARY: Because the Secretary of the Interior must determine that U.S. refiners do not have access to adequate supplies of crude oil in order to sell Federal royalty oil available in the Royalty-In-Kind (RIK) Program, MMS provides this notice requesting expressions of interest from eligible refiners.

DATES: Those refiners interested in the purchase of Federal royalty oil should contact MMS by January 3, 1986.

ADDRESS: Eligible refiners interested in purchasing royalty oil may contact Mr. James Mikelson, Minerals Management Service, Payor Acounting Branch, P.O. Box 5760 T.A., Denver, CO 80217, (303)231-3133.

FOR FURTHER INFORMATION CONTACT: RIK Program Coordinator John Vidrik, (303) 231-3608.

SUPPLEMENTARY INFORMATION: MMS is reviewing the access to crude oil supplies by eligible refiners based on geographical areas in order to determine the need for a sale of Federal royalty oil. The geographical areas are listed as follows:

1. Offshore (Outer Continental Shelf)—Pacific Coast.
2. Offshore (Outer Continental Shelf) Gulf of Mexico.
3. Onshore—States of California, Nevada, and New Mexico.

For this notice, eligible refiners are limited to small refiners as defined in 30 CFR 209.102 for the purchase of offshore (Outer Continental Sehlf) royalty oil and limited to independent refiners as defined in the Emergency Petroleum Allocation Act, 15 U.S.C. 751 et. seq) for the purchase of onshore royalty oil.

Dated: November 15, 1985.

John B. Rigg,

Acting Director, Mineral Management Service.

[FR Doc. 85-28150 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 16, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 11, 1985.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

El Dorado County

Placerville, *Pearson, John, Soda Works*, 594 Main St.

Santa Clara County

Stanford, *Palo Alto Stock Farm Horse Barn*, Fremont Rd.

GEORGIA

Coweta County

Moreland, *Brannon, W.A., Store-Moreland Knitting Mills*, Main St.

ILLINOIS

Cook County

Chicago, *Sheridan Park Historic District*, Roughly bounded by Lawrence, Racine, and Montrose Aves., and Clark St.

MAINE

Androscoggin County

Auburn-Lewiston Airport Paleoindian District

MASSACHUSETTS

Berkshire County

Lenox, *Elm Court*, Stockbridge St.

Worcester County

Gardner, *Garland Square Historic Distict*, Roughly bounded by City Hall Ave., Pleasant, Connors, Parker, and Central Sts., and Providence & Worcester RR tracks.

MISSOURI

St. Louis (Independent City)

Benton Park District, Bounded by Gravois Ave., I-55, S. Broadway, and Jefferson St.

OKLAHOMA

Garfield County

Enid, *Kaufman, H.L. House*, 1708 W. Maine

PENNSYLVANIA

Allegheny County

Pittsburgh, *Pittsburgh Central Downtown Historic District*, Roughly bounded by Liberty Ave., Grant St., Forbes Ave., and Wood St.

SOUTH CAROLINA

Beaufort County

Hilton Head Island, *Rear Lighthouse of Hilton Head Range Light Station*, Arthur Hill Golf Course, Palmetto Dunes Resort off US 278

McCormick County

Dorn Gold Mine (McCormick MRA).

McCormick, *McCormick Train Station (McCormick MRA)*, Main St.

McCormick, *Dorn, Joseph Jennings, House (McCormick MRA)*, Gold and Oak Sts.

McCormick, *Farmer's Bank (McCormick MRA)*, Main St.

McCormick, *Henderson, Otway, House (McCormick MRA)*, Augusta St.

McCormick, *Hotel Keturah (McCormick MRA)*, Main St.

McCormick, *McCormick County Courthouse (McCormick MRA)*, Hwy. 28

McCormick, *Sturkey, M.L.B., House (McCormick MRA)*, Main and Washington Sts.

VIRGINIA

Montgomery County

Christiansburg, *Cambria Freight Station*, 630 Depot St.

WYOMING

Park County

Ralston vicinity, *Heart Mountain Relocation Center*, Off US Alt 14

[FR Doc. 85-28152 Filed 11-25-85; 8:45 am]

BILLING CODE 4310-70M-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 106)]

The Baltimore and Ohio Railroad Co.—Abandonment and Discontinuance of Service in Miami County, OH; Findings

The Commission has found that the public convenience and necessity permit the Baltimore and Ohio Railroad Company to (1) abandon its 3.53-mile line of railroad between Eldean (valuation station 264+06) and Piqua, OH (valuation station 450+61), and (2) discontinue trackage rights over 1.02-miles of trackage of the Consolidated Rail Corporation between valuation station 450+61 at Piqua and valuation station 504+37 at Piqua Crossing; all in Miami County, OH.

A certificate will be issued authorizing this abandonment and discontinuance of service unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 days period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-28133 Filed 11-25-85; 8:45 am]

BILLING CODE 705-01-M

[Docket No. AB-55 (Sub-No. 147)]

Seaboard System Railroad, Inc.—Abandonment in Cumberland and Sampson Counties, NC; Findings

The Commission has found that the public convenience and necessity permit

the Seaboard System Railroad, Inc., to abandon its line of railroad extending from milepost AF-217.6 at Vander, NC to milepost AF-232.65 at Roseboro, NC, a distance of 15.05 miles, in Cumberland and Sampson Counties, NC.

A certificate will be issued authorizing this abandonment unlesss within 15 days after this publication the Commission also finds: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: November 14, 1985.

By the Commission, Division 1, Commissioners Sterrett, Gradison, and Lamboley. Commissioner Lamboley commented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-28132 Filed 11-25-85; 8:45 am]

BILLING CODE 705-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85-42]

Albert Lepis, M.D.; Jersey City, NJ; Hearing

Notice is hereby given that on July 30, 1985, the Drug Enforcement Administration, Department of Justice, issued to Albert Lepis, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AL0661872, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 1:00 p.m., on Wednesday, December 18, 1985, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: November 20, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-28173 Filed 11-25-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-44]

John F. Pholeric, Jr., M.D., Alexandria, VA; Hearing

Notice is hereby given that on July 30, 1985, the Drug Enforcement Administration, Department of Justice, issued to John F. Pholeric, Jr., M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AP6771415 and AP2578788, and deny any pending application for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, December 19, 1985, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: November 20, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-28174 Filed 11-25-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-27]

Daniel R. Zoll, M.D., Brookline, MA; Hearing

Notice is hereby given that on March 28, 1985, the Drug Enforcement Administration, Department of Justice, issued to Daniel R. Zoll, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AZ1221388, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, December 3, 1985, in the U.S. Tax Court Courtroom, 13th Floor, U.S. Customs House, Number 2 India Street, Boston, Massachusetts.

Dated: November 20, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-28175 Filed 11-25-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review:

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Title V of the Older American Act
ETA RC 83
One-time
Individuals or household; State or local governments; Federal agencies or employees; Non-profit institutions
800 responses; 103 hours

Survey forms requesting information are required for a program evaluation of the Senior Community Service Employment Programs (SCSEP). Affected public are participants in SCSEP and host agencies where participants are employed.

Revision

Employment Standards Administration
FECA Medical Report Forms 1215-0103; CA-16B, -17B, 20, 20A, 1090, 28B, 1300, 1303, 1304, 1305, 1306, 1308, 1314, 1316, and OWCP-5
As needed
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations
469,100 responses; 195,255 hours, 15 forms

Information obtained through the use of FECA medical forms is necessary to determine whether or not a federal employee who has filed a claim under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 et seq. is entitled to compensation.

Extension

Mine Safety and Health Administration
Weekly Air Flow Measurements
1219-0031
Weekly
Businesses and other for profit
16 respondents; 6,400 hours

Requires that air volume measurements be taken weekly in metal and nonmetal mines which have been classified as gassy. Records are required to be kept of the measurements.

Signed at Washington, D.C. this 21st day of November, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-28197 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-27-M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information.

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Occupational Safety and Health Administration
Hazard Communications
1218-0072; OSHA 245 (OSHA Form 174)
On occasion
Businesses or other for profit; small businesses or organization
328,000 respondents; 651,640 hours; 1 form
The Hazard Communications Standard requires the completion of a Material Safety Data Sheet (MSDS). The standard allows the employer to use any format as long as the information required by the standard is included on an MSDS. OSHA has received many requests from business to provide a form for the MSDS.

As a result, OMB clearance is being sought at this time for the express purpose of adding a non-mandatory form to the current information clearance. It is proposed that the non-mandatory OSHA 174 (MSDS) will be distributed to businesses upon request. The proposed OSHA 174 (MSDS) is reproduced in the Appendix.

Signed at Washington, D.C., this 21st day of November 1985.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510-26-M

APPENDIX

DRAFT

Material Safety Data Sheet

May be used to comply with OSHA's Hazard Communication Standard, 29 CFR 1910.1200. Standard must be consulted for specific requirements.

U.S. Department of Labor
Occupational Safety and Health Administration
(Non-Mandatory Form)

IDENTITY *(As Used on Label and List)*	*Note: Blank spaces are not permitted. If any item is not applicable, or no information is available, the space must be marked to indicate that.*

Section I

Manufacturer's Name	Emergency Telephone Number
Address *(Number, Street, City, State, and ZIP Code)*	Telephone Number for Information
	Date Prepared
	Signature of Preparer *(optional)*

Section II — Hazardous Ingredients/Identity Information

Hazardous Components (Specific Chemical Identity; Common Name(s))	OSHA PEL	ACGIH TLV	Other Limits Recommended	% *(optional)*

Section III — Physical/Chemical Characteristics

Boiling Point		Specific Gravity (H_2O = 1)	
Vapor Pressure (mm Hg.)		Melting Point	
Vapor Density (AIR = 1)		Evaporation Rate (Butyl Acetate = 1)	

Solubility in Water

Appearance and Odor

Section IV — Fire and Explosion Hazard Data

Flash Point (Method Used)	Flammable Limits	LEL	UEL

Extinguishing Media

Special Fire Fighting Procedures

Unusual Fire and Explosion Hazards

(Reproduce locally) OSHA 174, Sept. 1985

Section V — Reactivity Data

Stability	Unstable		Conditions to Avoid
	Stable		

Incompatibility (*Materials to Avoid*)

Hazardous Decomposition or Byproducts

Hazardous Polymerization	May Occur		Conditions to Avoid
	Will Not Occur		

Section VI — Health Hazard Data

Route(s) of Entry: Inhalation? Skin? Ingestion?

Health Hazards (*Acute and Chronic*)

Carcinogenicity: NTP? IARC Monographs? OSHA Regulated?

Signs and Symptoms of Exposure

Medical Conditions
Generally Aggravated by Exposure

Emergency and First Aid Procedures

Section VII — Precautions for Safe Handling and Use

Steps to Be Taken in Case Material Is Released or Spilled

Waste Disposal Method

Precautions to Be Taken in Handling and Storing

Other Precautions

Section VIII — Control Measures

Respiratory Protection (*Specify Type*)

Ventilation	Local Exhaust	Special
	Mechanical (*General*)	Other

Protective Gloves	Eye Protection

Other Protective Clothing or Equipment

Work/Hygienic Practices

[FR Doc. 85-28201 Filed 11-25-85; 8:45 am]
BILLING CODE 4510-26-C

Senior Executive Service; Appointment of Members to the Performance Review Board

This Notice amends Department of Labor Notice published on December 9, 1983 (48 FR 55199), listing Department of Labor members of the Performance Review Board of the Senior Executive Service.

The following executives are hereby appointed or reappointed, respectively, to three-year terms, effective November 18, 1985:

Dennis E. Whitfield
Roland G. Droitsch.

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, D.C. 20210.

Signed at Washington, D.C., this 18th day of November 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-28194 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 11, 1985–November 15, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,067; Armco, Inc., Ashland Works, Ashland, KY

TA-W-16,147; Alpha Sintered Metals, Inc., Ridgway, PA

TA-W-16,146; Union Carbide Corp., Carbon Products Div., Lawrenceburg, TN

TA-W-16,138; Burlington Industries, Inc., Klopman Fabrics Div., Hurt, VA

TA-W-16,069; Bergen Southwest Steel, Canutillo, TX

TA-W-16,164; Mineral Fertilizer Co., North Salt Lake, UT

TA-W-16,171; Colt Industries, Crucible Specialty Metals Div., Syracuse, NY

TA-W-16,110; Stearns-Rogers Manufacturers, Inc., Englewood, CO

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-16,204; Kilborn, Inc., Englewood, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,162; Consolidation Coal Co., Dilworth Mine, Rices Landing, PA

Aggregate U.S. imports of coal are negligible.

Affirmative Determinations

TA-W-16,160; Charles Weinstein Coat Co., Secaucus, NJ

A certification was issued covering all workers of the firm separated on or after July 9, 1984.

TA-W-16,142; Cross Country Clothes, Egypt Plant, Whitehall, PA

A certification was issued covering all workers of the firm separated on or after September 30, 1984.

TA-W-16,132; Monsanto Fibers & Intermediates, Pensacola, FL

A certification was issued covering all workers engaged in employment related to the research and development and production of nylon fibers for apparel separated on or after June 20, 1984.

TA-W-16,090; Roseburg Forest Products Co., Dillard Sawmills, Dillard, OR

A certification was issued covering all workers of the firm separated on or after June 7, 1984.

TA-W-16,178; Timberland Cedar Products, South Bend, WA

A certification was issued covering all workers of the firm separated on or after June 4, 1984 and before October 31, 1985.

TA-W-16,045; U.S. Steel Corp., Homestead Works, Homestead, PA

A certification was issued covering all workers except those engaged in employment related solely to the production of steel forgings separated on or after May 16, 1984.

TA-W-16,066; Aloyco, Inc., Elizabeth Foundry, Elizabeth, NJ

A certification was issued covering all workers of the firm separated on or after May 20, 1984.

TA-W-16,066A; Aloyco, Inc., Valve Plant, Linden, NJ

A certification was issued covering all workers of the firm separated on or after May 20, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 11, 1985–November 15, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street N.W., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: November 19, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-28199 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 211(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 6, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 6, 1985.

The petitions filed in this case available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC, this 18th day of November 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Aeolian Pianos, Inc., Foundry Division (workers)	Randolph, NY	11/12/85	11/7/85	TA-W-16,632	Piano plates.
Collier Keyworth Co. (workers)	Gardner, MA	11/6/85	10/31/85	TA-W-16,633	Juvenile strollers, car seats, high chairs.
Country Cousins Shoes, Inc. (UFCW)	Mocanaqua, PA	11/7/85	11/4/85	TA-W-16,634	Casual footwear and sneakers.
General Electric Corp., Mentor Equipment Plant (workers)	Mentor, OH	11/13/85	11/7/85	TA-W-16,635	Bipin reflector lamp equipment.
Industrial Casting Co (USWA)	Myerstown, PA	11/13/85	11/8/85	TA-W-16,636	Gray iron casting.
Louisiana Pacific Corp. (workers)	Ashland, WI	11/14/85	11/11/85	TA-W-16,637	2x4's and landscape timbers.
MSM Shoe Corp. (UFCW)	Herndon, PA	11/12/85	11/7/85	TA-W-16,638	Women shoe stitching.
Paramount Coat Co., Inc. (company)	Cambridge, MA	11/12/85	11/8/85	TA-W-16,639	Ladies blazers, raincoats, skirts.
Pennsylvania Optical Co. (Pennsylvania Optical Association.	Reading, PA	11/14/85	11/11/85	TA-W-16,640	Vision aid magnifiers (VAM) reading glasses.
Switchcraft, Inc. (workers)	Paxton, IL	11/13/85	11/6/85	TA-W-16,641	Electronic component parts.
United Die Corp. (UFCW)	Hazleton, PA	11/12/85	11/7/85	TA-W-16,642	Cutting dies for shoe industry.
Armstrong Rubber Co., Southern Division (URW)	Natchez, MS	11/7/85	11/4/85	TA-W-16,643	Tires—passenger car, truck.
Bamberg Textile Mills (workers)	Bamberg, SC	10/25/85	10/23/85	TA-W-16,644	Fabrics.
Carter Footwear, Inc. (UFCW)	Wilkes Barre, PA	11/7/85	11/4/85	TA-W-16,645	Casual footwear & sneakers.
Empire Detroit Steel (Dover Plant) (SWA)	Dover, OH	10/28/85	10/12/85	TA-W-16,646	All fabricated products (pails, roofing, stonepipe, downspout, trash, cans, ash cans).
Great Lakes Carbon Corp. (International Chemical Workers Union).	Morganton, NC	11/7/85	10/28/85	TA-W-16,647	Graphite electrodes.
Hyatt Clark Industries (UAW)	Clark, NJ	11/7/85	11/5/85	TA-W-16,648	Tapered roller bearings.
SKF Industries (UAW)	Shippensburg, PA	11/12/85	11/6/85	TA-W-16,649	Bearing cages, plates & seals, ribbon type.

[FR Doc. 85-28200 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[Docket No. H-040]

Occupational Exposure to 4,4'-Methylenedianiline (MDA)

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

ACTION: Extension of time.

SUMMARY: On October 22, 1985, OSHA announced in the **Federal Register** its intention to form an MDA Negotiated Rulemaking Advisory Committee (50 FR 42789). Interested parties were given 30 days for submitting comments and requests for membership or representation on the Committee. OSHA has received several informal requests for the extension of this filing period from interested parties. In light of these requests and in order to provide interested parties the greatest possible opportunity to participate OSHA hereby grants an additional 30 days for the submission of these documents.

DATE: OSHA must receive written comments and requests for membership or representation by December 23, 1985.

ADDRESS: All written comments directed to OSHA Docket No. H-040 should be sent, in triplicate, to the following address: Docket Office, Rm N-3670, 200 Constitution Ave., NW., Washington, D.C. 20210; Telephone (202) 523-7894.

Requests for membership or representation on the Committee should be sent to Clarence Page, OSHA Division of Consumer, Affairs, Rm. N-3662, 200 Constitution Ave., NW., Washington, D.C. 20210; Telephone: (202) 523-8024.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Room N-3641, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone: (202) 523-8151.

This Notice was prepared under the direction of Patrick R. Tyson, acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. 20210. It is issued pursuant to section 6(b) and 7(b) of the Occupational Safety and Health Act (84 Stat. 1593; 29 U.S.C. 655, 656) Secretary's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1912.

Signed at Washington, D.C., this 21st day of November 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 85-28198 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-26-M

Iowa State Standards

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa plan and the adoption of Subpart J of Part 1952 containing the decision.

The Iowa plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated October 8, 1985 from Walter H. Johnson, Deputy Commissioner of Labor to Alonzo L. Griffin, Area Director, and incorporated as part of the plan, the State submitted State standards comparable to: Occupational Exposure to Ethylene Oxide, 29 CFR 1910.1047 as published in the **Federal Register** (49 FR 25796 dated June 22, 1984); Power Lawnmower Amendments, 29 CFR 1910.243 as published in the **Federal Register** (50 FR 4648 dated February 1, 1985). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment

requested on April 12, 1985, hearing held on May 29, 1985 and resolution adopted by the Iowa Bureau of Labor on May 8, 1985 pursuant to Chapter 17a, Iowa Code. The standards were effective on May 8, 1985 and notice of their adoption was published by the State on June 5, 1985.

2. *Decision.* Having reviewed the State submission in comparision with the Federal standards it has been determined that the State standards are identical to the comparable Federal standards and should therefor be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations. Directorate of Federal/State Operations, Office of State Programs, Room N3476, 200 Constitution Avenue, NW., Washington, DC 20210; Office of the Regional Administrator, OSHA, Room 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Iowa Bureau of Labor, 307 E. 7th Street, Des Moines, Iowa 50319.

4. *Public participation.* Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplment to the Iowa State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective November 26, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Kansas City, Missouri this 4th day of November 1985.

Roger A. Clark,

Regional Administrator.

[FR Doc. 85-28195 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides, after public hearing, for adoption of State standards which are at least as effective as Federal standards promulgated under section 6 of the Act. Sections 1952.120–1952.124 of Subpart F set forth the State's schedule for the adoption of Federal standards. By letters dated August 12, 1980, November 4, 1980, and February 4, 1982 from James P. Sullivan, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted amendments to State standards comparable to Federal standards, and amendments to State standards for which there are no Federal equivalents. The amendments with Federal equivalents, which are comparable to Federal standards amendments, affect State standards comparable to 29 CFR 1910.10, 1910.28(g), 1910.28(j), 1910.94, 1910.95, 1910.97, 1910.134, 1910.1000, 1910.1001, 1910.1044, 1910.1045, and 1910.1046. State-initiated amendments relate to Confined Space Entry, new requirements for ultraviolet light and lasers to Nonionizing Radiation standards, changes to Permissible Practices, Minimal Acceptable Respirator Program, Airborne Contaminants, and changes to Occupational Noise Exposure.

The above amendments were adopted as Washington Administrative Orders No. 80-14 on August 8, 1980, effective September 6, 1980, No. 80-22, effective November 29, 1980, and No. 82-1, effective February 13, 1982.

2. *Decision.* Having reviewed the State submissions in comparison with Federal standards, it has been determined that they are at least as effective as Federal standards where corresponding Federal standards exist, and where there is no direct comparison, that the State standards do not overlap or diminish the requirements of other State standards which are comparable to Federal. The standards amendments were placed in effect on September 6, 1980, November 29, 1980, and February 13, 1982. OSHA received no comments which indicated significant objection to the State standards either as to effectiveness or as to conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA, therefore, approves the standards changes. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Rm. 6003, 909 First Ave., Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Rm. N3476, 200 Constitution Avenue NW., Washington, D.C. 20210

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is one for which there is no comparable Federal standard and therefore the State standard exceeds the Federal standard.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 26, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat, 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 17th day of June 1983.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 85-28196 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-195; Exemption Application No. D-5701 et al.]

Grant of Individual Exemptions; General Electric Pension Trust et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Electric Pension Trust (the Trust), Located in New York, New York

[Prohibited Transaction Exemption 85-195; Exemption Application No. D-5701]

Exemption

(a) *General Exemption.* The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, financing, or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) or the borrowing or lending of money in connection therewith, between a party in interest and the Trust, provided that the following conditions are satisfied:

(1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by the trustees of the Trust, as described in the notice of proposed exemption,

(2) Any such party in interest is not—

(i) General Electric Company (GE), the sponsor of the Trust, any person directly or indirectly controlling, controlled by, or under common control with GE, any officer, director, or employee of GE or any of its subsidiary or affiliated companies, or any partnership in which GE is a 10 percent or more (directly or indirectly in captial or profits) partner; or

(ii) A person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction;

(3) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Trustees or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unrelated parties.

(4) GE shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of GE, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (5) below; and

(5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at GE's headquarter's offices, or, upon prior arrangement with GE, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan which is funded, in whole or part, by the Trust with respect to which GE is a named fiduciary or any duly authorized employee or representative of such fiduciary,

(C) Any participant or beneficiary of any plan which is funded, in whole or part, by the Trust or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine GE's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific Exemption.* The restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the furnishing of services, facilities and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a) (4) and (5) of this exemption are met.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on April 2, 1985 at 50 FR 13098.

EFFECTIVE DATE: This exemption is effective July 29, 1985.

Written Comments and Hearing Request: The Department received 32 comments regarding the proposed exemption. Most of these comments did not raise issues going to the merits of the proposed exemption. Many sought information which was provided by the Department via telephone. Several of the commentators recommended that the exemption be granted by the Department. The Department also received one request for a public hearing, but it was subsequently withdrawn.

One comment received by the Department requested that the exemption be limited to real estate investments by the Trust in properties located in the United States and its territories. The applicants responded that such a restriction would be inconsistent with the Act, which requires in section 404(b) that the indicia of ownership of a plan's assets (not the assets themselves) must generally be held within the jurisdiction of the district courts of the United States. In addition, regulations under section 404(b) of the Act waive the indicia of ownership requirement under certain circumstances. The applicants represent that they will comply at all times with the provisions of Act section 404(b) and the regulations thereunder.

Another comment requested that the exemption be modified such that real estate investments be limited to a maximum percentage of Trust assets, and that the amount of Trust assets invested in any one project also be subject to a maximum percentage limit. The applicants responded that the trustees of the Trust are subject to the fiduciary responsibility requirements of the Act, including the prudence requirements, and, specifically, the requirements concerning diversification of investments. The proposed exemption would not change that. Moreover, the applicants point out that the proposed general exemption involves no potential conflict of interest since it does not cover real estate investments in which GE, its affiliates, or any other fiduciary having investment discretion with respect to Trust assets has an interest. Thus, the applicants contend that the percentage limits recommended by the commentator would impose a severe restriction on Trust investments, but would not serve any positive purpose.

Further, another comment noted that all transactions which are the subject of the proposed exempton will be subject to the discretion and control of the Trust's trustees, and that the trustees are all employees of GE. The commentator cited several acts of wrongdoing by GE or its officers, including anti-trust violations and falsification of charges on government contracts. The commentator stated that while the Trust has had excellent management in the past, there is no guarantee that this will continue in the future. The applicants responded to this comment by stating that none of the trustees of the Trust nor the members of the Benefit Plans Investment Committee of GE were personally involved or alleged to have been involved in the matter of falsification of charges on government contracts or in any activities which have culminated in anti-trust injunctions or cease and desist orders being entered against GE or any of its affiliates.

The applicants informed the Department that the Trust entered into a transaction on July 29, 1985, that would have been encompassed by the exemption had it been finalized at that time. Thus, the applicants requested that the proposed exemption be made retroactive to that date.

The Department has considered the entire record, including the comment letters received and the applicants' response to the comments, and has determined to grant the exemption as it was proposed, retroactive to July 29, 1985.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Tharco Affiliated Companies Profit Sharing Plan and Trust (the Plan), Located in San Lorenzo, California

[Prohibited Transaction Exemption 85-196; Exemption Application No. D-5792]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan of funds by the Plan to Tharco Precision, Inc., a party in interest with respect to the Plan, provided that the terms of the loan remain at least as favorable as an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1985, at 50 FR 37601.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Baker, Lieberman & Filios, D.D.S., P.C. Employees' Profit Sharing and Retirement Plan, Located in Rochester, New York

[Prohibited Transaction Exemption 85-197; Exemption Application No. D-5943]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of two partnership interests in Red River Associates by the Plan to Drs. Kenneth I. Lieberman and Achilles M. filios, party in interest with respect to the Plan, provided that the terms of the proposed sale are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 26, 1985, at 50 FR 30540.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or

administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 21st day of November 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-28192 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6134 et al.]

Proposed Exemptions; Roberto R. Pagarijan, M.D., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Roberto R. Pagarigan, M.D. Prototype Money Purchase Plan Trust (the Plan)

[Application No. D-6134]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan (the Loan) of $37,979 or no more than 25% of the Plan's assets as of the date the Loan is made, by the Plan to Roberto R. Pagarigan, M.D. (Dr. Pagarigan), the sponsor of the Plan, provided that the terms and conditions of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction between unrelated parties.[1]

Summary of Facts and Representations

1. The Plan is a self-directed, prototype Keogh plan with one participant, Dr. Pagarigan, and assets with a value of $150,919.38 as of August 31, 1985. Dr. Pagarigan is the decision-maker with respect to Plan investments. Commerce National Bank of Tiffin Ohio (the Bank) acts as the custodian and administrator of the Plan.

2. Dr. Pagarigan purchased a parcel of unimproved real property (the Property) in Seneca County, Ohio approximately five years ago as a speculative investment. He represents that the area is changing in character from farmland to housing developments and that land values are increasing or will increase shortly. The purchase was financed with a loan (Loan #1) from the Fedeal Land Bank, which was secured by a first mortgage on the Property.

3. Recently, Dr. Pagarigan has experienced several serious problems, including family illness, which have resulted in a lessened amount of time devoted to his practice with a commensurate reduction in his income. In order to meet his need for additional cash, Dr. Pagarigan has attempted to sell the Property, but has been unable to do so at or near its market value. He has refinanced Loan #1 with a second loan (Loan #2) from National City Bank, Norwalk. The outstanding balance of Loan #2 was approximately $112,000 as of September 10, 1985. Loan #2 is secured by a first mortgage on the Property.

4. Loan #1 carried a floating rate of interest that was 13.75% as of August, 1985. Monthly payments were applied first to interest and the balance to principal.

5. Loan #2 also carries a floating interest rate, which is currently 11.5%, or 21¼% less than Loan #1. Loan #2's payment terms specify a fixed monthly principal payment and an interest payment calculated monthly on the remaining principal. The applicant represents that payments on Loan #2 will be $6,000-$8,000 less annually than of Loan #1.

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[1] Since Dr. Pagarigan is the Plan sponsor and the sole Plan participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code. Since Dr. Pagarigan is an owner-employee, the statutory exemption under section 4975(d)(1) of the Code is unavailable to him by reason of section 4975, but the Department may grant an administrative exemption under section 4975(c)(2).

6. Dr Pagarigan wishes to borrow up to 25% of the value of the Plan's assets from the Plan in order to prepay part of Loan #2, which will further reduce his total interest payments. The Loan will carry a floating interest rate set at the bank's prime rate plus 1%, currently 11.5%, with a fixed monthly principal payment and interest payments calculated monthly on the remaining principal. The Loan will be fully amortized over fifteen years. The Bank represents that these terms are typical for commerical loans in the area. The Loan will be secured by a second mortgage on the Property.

7. The property was appraised on March 26, 1985, by Wayne Griffin, an independent real estate broker in Tiffin, Ohio. Mr. Griffin estimated the fair market value of the Property as $207,584. This represents approximately 183% of the total outstanding indebtedness that will be secured by the Property.

8. The applicant represents that he is continuing to attempt to sell the Property, and that when he does so, the Loan will be repaid fully.

9. The Bank represents that it is aware of its fiduciary obligations under the Act and will strictly adhere to the conditions under the Act and will strictly adhere to the conditions of this proposed exemption, if graned, including taking any action necessary to protect and enforce the Plan's rights in the event of breach or default by Dr. Pagarigan.

10. In summary , the applicant represents that the proposed transaction satisfies the criteria of section 408(a) because: (a) the interest rate and other terms are typical for such commerical loans in the area; (b) the Loan is secured by the Property, which has a fair market value in excess of 180% of all the outstanding indebtedness which it secures; (c) the Loan will represent no more than 25% of the Plan's assets as of the date it is made; and (d) Dr. Pagarigan is requesting the Loan in order to ameliorate the expenses he is incurring due to his current difficulties.

Notice to Interested Persons: Because Dr. Pagarigan is the Plan sponsor and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Lakeshore Internal Medicine, S.C. Profit-Sharing Plan and Trust (the Plan) Located in Manitowoc, Wisconsin

[Application No. D-6338]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1) (A) through (E) of the Code, shall not apply to the sale of two diamonds for cash from the individual segregated account of Dr. J. Lawrence Stoune (Stoune) in the Plan to Stoune, provided the sales price is not less than the fair market value at the time of sale.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan with nine participants and total assets of $221,037 as of September 30, 1984. The First Interstate Trust Company of Wisconsin is the trustee (the Trustee) for the Plan. The Plan administrators are Stoune, Dr. James W. Hoftiezer and Dr. Bradley Poulson. The Plan permits each participant to control and direct the investments of the funds in his or her individual account. The account of each Plan participant is held as a separate account.

2. Stoune is a participant in the Plan as well as a shareholder and director of Lakeshore Internal Medicine, S.C. (the Employer). The total assets in Stoune's account, as of September 30, 1984, equalled $117,226. During 1981, Stoune purchased two diamonds for cash for his segregated account in the Plan. The diamonds are a 0.77 carat D color VS-1 round brilliant diamond purchased for $8,600 and a 0.82 carat E color VVS-2 round brilliant diamond purchased for $8,475. The applicant notes that the diamonds have been held by the Trustee or the former trustee at all times since their purchase.

3. An appraisal of the diamonds by a jeweler in May 1984 placed their value at a level considerably below that of their original purchase price. Peter Vander Zanden (Vander Zanden), a certified gemologist in Green Bay, Wisconsin, stated on May 15, 1984, that the fair market value of the gems at the time was $2,550 for the 0.77 carat diamond and $2,850 for the 0.82 carat diamond. The applicant represents that Vander Zanden is independent of Stoune and the Employer. Fair market value is defined, in part, in the American Gem Society appraisal guidelines as "the approximate amount that one may anticipate receiving in a transaction between a willing buyer and a willing seller, time not being of the essence."

4. Vander Zander also stated that the replacement value as of May 15, 1984, was $4,225 for the 0.77 carat diamond and $4,785 for the 0.82 carat diamond. According to Vander Zanden, replacement value is the price at which he would sell a stone of similar quality to a retail customer.

5. Due to the lower value of the diamonds at the present time relative to their purchase price, and because the applicant does not anticipate that the original price will be recovered, Stoune believes that retaining the diamonds in his individual account does not constitute a prudent and wise investment for the account. Accordingly, Stoune now proposes to purchase the diamonds from his segregated account for his personal use and not for investment purposes.

6. Stoune will purchase both diamonds for their replacement value at the time of sale, based on an updated appraisal to be made by Vander Zanden. Stoune will buy the diamonds for cash, and any commissions related to the sale will be paid by Stoune rather than by the Plan or his account in the Plan. The cash realized from the sale of the diamonds will be invested at the direction of Stoune and should result in future earnings and growth of the account.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the diamonds will be entirely for cash; (2) the price to be paid for both diamonds will be their replacement value, based on a current independent appraisal made by a certified gemologist; (3) the transaction will involve only Stoune's individual segregated account in the Plan; and (4) any commissions arising from the sale of the diamonds will be paid by Stoune rather than by the Plan.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of November 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-28193 Filed 11-25-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Design 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 Design Arts Advisory Panel (Exploration/Research Section) to the National Council on the Arts will be held on Friday, December 13, 1985 from 9:00 am-5 pm in room M-14 of 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 13, 1985 from 4:00-5:00 pm to discuss policy issues.

The remaining sessions of this meeting on December 13, 1985 from 9:00 am-4:00 pm 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 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 Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

November 20, 1985.

[FR Doc. 85-28212 Filed 11-25-85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and time: December 16-17, 1985—9:00 a.m.-5:00 p.m., December 16, 9:00 a.m.-3:00 p.m., December 17.

Place: National Science Foundation, 1800 "G" Street, N.W., Room 540, Washington, D.C. 20550.

Type of Meeting: Open.

Contact person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9571.

Summary minutes: Mrs. Mary Poats at the above address.

Purpose of Advisory committee meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Summary agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of the Engineering Research Center Program; discussion of Engineering Directorate budget situation as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-28154 Filed 11-25-85; 8:45 am]

BILLING CODE 7555-01-M

Program Advisory Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announced the following meeting:

Name: Program Advisory Committee for Advanced Scientific Computing.

Dates and times: December 12—8:00 a.m.-5:00 p.m., December 13—8:00-3:30 p.m.

Place: Room 540, National Science Foundation, 1800 G St. N.W., Washington, DC 20550.

Type of meeting: *Open.* December 12—8:00 a.m.-4:00 p.m., December 13—8:00 a.m.-3:30 p.m. *Closed.* December 12—4:00 p.m.-5:00 p.m.

Contact person: Dr. John W.D. Connolly, National Science Foundation, Washington, DC 20550, Phone: (202) 357-7558.

Summary of minutes: May be obtained from Dr. John W.D. Connolly.

Purpose of Committee: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda: The open session will be focused on planning and policy issues. These will include a review of recent actions and budget priorities. The closed session will discuss pending proposals.

Reason for closing: The closed session of the meeting will deal with a discussion of proposals containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

November 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-28153 Filed 11-25-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Houston Lighting and Power Co. et al.; Order

November 20, 1985.

Order (Reopened Phase II Hearings)

In the matter of Houston Lighting and Power Co., et al.; (South Texas Project Units 1 and 2), Docket Nos. STN 50-498 OL, STN 50-499 OL; ASLBP No. 79-421-07 OL.

The reopened Phase II evidentiary hearings ordered by our Memorandum and Order dated November 14, 1985 (LBP-85-45) will be held on December 5 and, to the extent necessary, December 6, 1985 at the University of Houston Law School, University Park, Room 215, Teaching Unit II, 4800 Calhoun, Houston, Texas 77004. The hearings will extend from 9:30 a.m.-6:00 p.m. on December 5 and (if necessary) will resume at 9:00 a.m on December 6.

As provided in LBP-85-45, documents to be furnished by the Applicants are to be filed by November 27, 1985 or (alternatively) received by the Board and parties by December 2, 1985. Although prepared testimony need not be utilized, parties may elect to do so. Parties should furnish the names of all witnesses whom they propose to present, together with any prepared testimony they wish to file, by the same dates.

Members of the public are invited to attend these hearings, but no oral limited appearance statements will be entertained.

It is so ordered.

Dated at Bethesda, Maryland this 20th day of November 1985.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 85-28213 Filed 11-25-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on October 29, 1985, (50 FR 43820). Individual authorities established or revoked under Schedules A, B, or C between October 1, 1985 and October 31, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception is established:

Department of the Army

Positions of Translator (Typing), GS-1040-5/9, and Supervisory Translator, GS-1040-11, at the U.S. Army School of the Americas, Fort Benning, Georgia. No new appointments may be made under this authority after December 31, 1985. Effective October 28, 1985.

Schedule B

No Schedule B exceptions were established or revoked in October.

Schedule C

The following exceptions are established.

Department of Agriculture

One Staff Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective October 1, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective October 2, 1985.

One Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective October 9, 1985.

One Staff Assistant to the Administrator, Food and Nutrition Service. Effective October 9, 1985.

One Confidential Assistant to the Administrator, Rural Electrification Administration. Effective October 30, 1985.

One Private Secretary to the Assistant Secretary for Marketing and Inspection Services. Effective October 30, 1985.

Department of Commerce

One Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective October 1, 1985.

One Congressional Affairs Advisor to the Director, Bureau of the Census. Effective October 1, 1985.

One Special Assistant to the Secretary. Effective October 1, 1985.

One Confidential Assistant to the Assistant Secretary for Trade Development. Effective October 4, 1985.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, International Trade Administration. Effective October 4, 1985.

One Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction, International Trade Administration. Effective October 10, 1985.

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs, Office of the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 10, 1985.

One Confidential Assistant to the Assistant Secretary for International Economic Policy. Effective October 15, 1985.

One Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective October 15, 1985.

One Confidential Assistant to the Under Secretary for International Trade. Effective October 16, 1985.

One Congressional Liaison Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 16, 1985.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service, International Trade Administration. Effective October 21, 1985.

One Special Assistant to the Chief Economist, Office of the Secretary. Effective October 25, 1985.

One Confidential Assistant to the Deputy Under Secretary for International Trade, International Trade Administration. Effective October 28, 1985.

One Special Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective October 28, 1985.

Department of Defense

One Special Assistant for East African Affairs to the Deputy Assistant Secretary of Defense (African Affairs), Office of the Assistant Secretary of Defense (International Security Affairs). Effective October 2, 1985.

One Speechwriter to the Assistant Secretary of Defense (Public Affairs). Effective October 2, 1985.

One Personal and Confidential Assistant to a Judge, U.S. Court of Military Appeals. Effective October 7, 1985.

One Special Assistant for Strategic Defense and Space Arms Control Policy to the Deputy Assistant Secretary of Defense (Nuclear Forces and Arms Control Policy), Office of the Assistant Secretary of Defense (International Security Policy). Effective October 8, 1985.

One Confidential Assistant to the Military Assistant to the Secretary of Defense. Effective October 9, 1985.

One Private Secretary to the Deputy Under Secretary of Defense (International Programs and Technology), Office of the Under Secretary of Defense (Research and Engineering). Effective October 18, 1985.

One Special Assistant for Emergency Planning to the Assistant Secretary of Defense (Acquisition and Logistics). Effective October 28, 1985.

Department of Education

One Director, Office of Intergovernmental Affairs, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective October 1, 1985.

One Special Assistant to the Executive Secretary, Office of the Under Secretary. Effective October 17, 1985.

One Special Assistant to the Deputy Under Secretary for Management. Effective October 21, 1985.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective October 22, 1985.

One Deputy Director, Office of Bilingual Education and Minority Languages Affairs, to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective October 25, 1985.

One Confidential Assistant to the Under Secretary. Effective October 28, 1985.

One Special Assistant to the Assistant Secretary for Legislation and Public Affairs. Effective October 28, 1985.

One Confidential Assistant to the Director, Intergovernmental Affairs Staff, Office of the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective October 30, 1985.

One Confidential Assistant to the Executive Assistant to the Under Secretary. Effective October 30, 1985.

Department of Health and Human Services

One Confidential Staff Assistant to the Director, Office of Child Support Enforcement. Effective October 24, 1985.

Department of Housing and Urban Development

One Special Assistant (Advance) to the Special Assistant to the Assistant Secretary for Public Affairs. Effective October 1, 1985.

One Special Assistant to the Assistant to the Secretary for Labor Relations. Effective October 15, 1985.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective October 15, 1985.

One Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs. Effective October 22, 1985.

One Special Assistant to the Deputy Under Secretary for Field Coordination, Office of the Secretary. Effective October 28, 1985.

One Special Assistant (Public Affairs) to the Regional Administrator/Regional Housing Commissions, with duty location in Denver, Colorado. Effective October 28, 1985.

Department of Interior

One Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks. Effective October 15, 1985.

Department of Justice

One Administrator, Office for Victims of Crime/Federal Crime Victims Assistance Administrator, to the Assistant Attorney General, Office of Justice Programs. Effective October 1, 1985.

One Confidential Assistant and Private Secretary to the Chairman, Foreign Claims Settlement Commission. Effective October 8, 1985.

One Special Assistant to the Administrator, Office of Juvenile Justice and Delinquency Prevention. Effective October 18, 1985.

One Confidential Assistant to the Director, Bureau of Justice Programs. Effective October 22, 1985.

One Staff Assistant to the Attorney General. Effective October 24, 1985.

One Confidential Assistant and Private Secretary to the Assistant Attorney General, Land and Natural Resources Division. Effective October 31, 1985.

Department of Labor

One Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective October 15, 1985.

One Special Assistant to the Secretary. Effective October 15, 1985.

One Special Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration. Effective October 24, 1985.

One Special Assistant to the Assistant Secretary for Pension and Welfare Benefit Programs. Effective October 28, 1985.

One Staff Assistant to the Assistant Secretary for Pension and Welfare Benefit Programs. Effective October 28, 1985.

One Executive Assistant to the Deputy Under Secretary, Employment Standards Administration. Effective October 31, 1985.

Department of State

One Staff Assistant to the Legal Adviser. Effective October 2, 1985.

One Manager, President's Guest House, to the Chief of Protocol. Effective October 24, 1985.

Department of Transportation

One Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective October 7, 1985.

One Special Assistance to the Associate Administrator for Budget and Policy, Urban Mass Transportation Administration. Effective October 7, 1985.

One Special Assistant to the Deputy Administrator, Urban Mass Transportation Administration. Effective October 7, 1985.

One Director, Office of Media and Special Programs to the Assistant Secretary for Public Affairs. Effective October 8, 1985.

One Director, Executive Secretariat, to the Administrator, Urban Mass Transportation Administration. Effective October 15, 1985.

One Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective October 15, 1985.

One Supervisory Public Affairs Specialist to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration. Effective October 15, 1985.

One Attorney Advisor (General) to the Chief Counsel, Urban Mass Transportation Administration. Effective October 18, 1985.

One Congressional Liaison Officer to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective October 23, 1985.

One Special Assistant to the Administrator, Federal Highway Administration. Effective October 28, 1985.

One Special Assistant to the Administrator, Urban Mass Transportation Administration. Effective October 28, 1985.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective October 28, 1985.

Department of Treasury

One Staff Assistant to the Assistant Secretary for Management. Effective October 4, 1985.

One Staff Assistant to the Deputy Assistant Secretary for Public Affairs and Public Liaison. Effective October 4, 1985.

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective October 4, 1985.

One Deputy Director of Scheduling to the Assistant Secretary for Public Affairs and Public Liaison. Effective October 15, 1985.

One Staff Assistant to the Executive Secretary. Effective October 15, 1985.

One Staff Assistant to the Deputy Assistant Secretary for Policy, Planning and Communications. Effective October 22, 1985.

Arms Control and Disarmament Agency

One Staff Assistant to the Director. Effective October 16, 1985.

Consumer Product Safety Commission

One Special Assistant (Legal) to a Commissioner. Effective October 1, 1985.

Equal Employment Opportunity Commission

One Media Contact Specialist (Bilingual) to the Director of Communications. Effective October 1, 1985.

Environmental Protection Agency

One Special Assistant to the Deputy Administrator. Effective October 8, 1985.

One Staff Assistant to the Associate Administrator for Regional Operations. Effective October 30, 1985.

Federal Home Loan Bank Board

One Secretary to the Chairman. Effective October 8, 1985.

Federal Maritime Commission

One Confidential Assistant to a Commissioner. Effective October 15, 1985.

General Services Administration

One Special Assistant to the Executive Director, Office of Information Resources Management. Effective October 16, 1985.

National Labor Relations Board

One Confidential Assistant to a Board Member. Effective October 25, 1985.

One Confidential Assistant to the General Counsel. Effective October 28, 1985.

Occupational Safety and Health Review Commission

One Confidential Assistant to a Commissioner. Effective October 28, 1985.

Office of Management and Budget

One Confidential Assistant to the Director. Effective October 24, 1985.

One Executive Assistant to the Director, Office of Management and Budget. Effective October 24, 1985.

One Staff Assistant to the Assistant Director for Legislative Affairs. Effective October 30, 1985.

Small Business Administration

One Staff Assistant to the Director, Office of Women's Business Ownership. Effective October 1, 1985.

One Special Assistant to the Administrator. Effective October 15, 1985.

U.S. Information Agency

One Staff Assistant to the Director of Private Sector Programs. Effective October 24, 1985.

U.S. Trade Representative

One Confidential Secretary to the U.S. Trade Representative. Effective October 16, 1985.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Logistics. Effective October 2, 1985.

One Confidential Assistant to the Associate Deputy Administrator for Logistics. Effective October 22, 1985.

U.S. Office of Personnal Management.

Constance Horner,

Director.

[FR Doc. 85-28130 Filed 11-25-85; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. RM86-2; Order 64]

Petition of United Parcel Service; Notice and Order Instituting Proceeding

Issued November 20, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Introduction. On August 22, 1985, United Parcel Service (UPS) filed with us a Petition for Study of Costing Methods. UPS described its proposal as—

. . . a rulemaking proceeding for the purpose of studying appropriate costing methods for the attribution of the costs of city delivery carrier street time, vehicle service drivers, and purchased transportation.

Petition at 10. On August 27, 1985, we issued Order No. 627 [50 FR 35629 (September 3, 1985)] calling for the comments of any interested person "on the desirability of instituting some type of proceeding on the . . . UPS filing" (Order No. 627 at 2). Eighteen responses were filed.

We have determined to institute a proceeding to investigate ways of expediting and clarifying the treatment of costing issues in future rate cases. Its potential scope is substantially broader than the three subject areas UPS raises, although they will be included in it as long as it appears useful progress might be made on them.[1] The touchstone for inclusion will be the likelihood of useful progress on the particular issue in a nonrate-case setting. It is necessary to recall that not only rules or statements of policy, but also an improved general understanding of costing issues and steps made in solving them, fall under the rubric of "useful progress." Especially in view of the 10-month time limit on rate proceedings, the Commission is better able to carry out its statutory duties when it is up to date on such steps, even if it has not earlier issued rules or policy documents on them.

This broad purpose implies an equally broad potential scope for the proceeding. As discussed below, we have previously indicated a number of areas wherein progress in cost attribution, and in the assembly of data for that purpose, would be desirable. Appendix K to our decision in Docket R84-1 contains a list of such areas; it will be a major starting point in this docket. Besides, other Docket R84-1 problems—such as the cost effects of all-preferential second class as evaluated on the basis of actual experience (lack of which prevented our considering the full range of proposed discounts in R84-1), or a possible updating of the Business Reply cost

[1] We stated in Order No. 627 that we . . . reserve[d] the right to raise other costing issues including, for example, those addressed in Docket No. R84-1 at pages 131-141, and Appendices J and K, as well as those that may be raised by other parties.

While few suggestions for additional issues were made by commenters (understandably, in view of the general opposition to UPS's petition), some did indicate areas of interest. Direct Marketing Association, for instance, suggested that if a proceeding were held, the issue of responsibility for peak load costs should be included. DMA Comments at 2-3. Mail Order Association of America (MOAA) made suggestions at p. 10 of its Response, mentioning Service-Related Costs and Ramsey pricing.

study, now over 10 years old—could well be included. Questions that appear likely to be raised in future rate proceedings are equally appropriate for at least preliminary consideration here.

Our decision to undertake this proceeding rests on a number of potential benefits from it. Besides allowing us to investigate the status of the Appendix K issues and requests, exploration of an appropriately chosen list of cost isssues can:

—Make parties' preparation for future rate cases more focused and hence more economical;

—Clarify the need for data and suggest appropriate ways of securing them in time to apply them usefully in rate proceedings;

—Increase the general understanding of costing issues at a time when statutory deadlines do not compel expedited analysis and decisionmaking; and

—Provide an appropriate vehicle for indicating the most promising lines for future rate filings and supporting or opposing evidence to take, without foreclosing the presentation of other positions.

If a proceeding of this kind is feasible—a question we turn to next—we hope to gain at least some of these advantages from it.

Jurisdictional issues. A threshold issue, raised by most of the comments, is the extent of our authority to issued rules affecting costing. We think it desirable to explain at an early stage, albeit in general terms, the statutory basis of the present proceeding. Of course, any particular rulemaking order ultimately is subject to being tested, independently, to see if it is within the delegated authority.

We can agree with the suggestion that the outcome of a particular rate case cannot be dictated by rules made previously in notice-and-comment proceedings. Section 3624(a) of the Act entitles parties to a trial-type hearing. We do not think the UPS petition contemplates such shortcircuiting of the hearing process, nor would we waste the parties' or our own resources attempting to achieve it. This does not mean, however, that the Commission lacks statutory power to make substantive rules of a generic nature, based on a rulemaking record, that can later be applied in particular rate proceedings. To the extent the comments suggest this cannot be done, we differ from them.

It is suggested that 39 U.S.C. 3603, delegating general rulemaking authority, is limited to purely procedural matters.[2] This limitation does not appear in its language, which instead uses as a standard the necessity and propriety of the rule to the carrying out of our functions. Cost attribution is a Commission function under ch. 36 of the Act. *Time, Inc.* v. *U.S. Postal Service,* 685 F.2d 760 (2d Cir. 1982); *National Association of Greeting Card Publishers* v. *U.S. Postal Service,* 462 U.S. 810 (1983). Our duty is to recommend rates resting on statutorily correct attributions, following a hearing that conforms to 5 U.S.C. §§ 556–557. To the extent that substantive general rules or policy statements affecting costing can find a place in that scheme, we have the power to issue them.[3]

It has also been argued that rates can be set only in a § 3622 proceeding, initiated by the Service and ended by the Governors' decision, and hence we cannot conduct a rulemaking on matters that would affect rates. These requirements would of course bar us from attempting to recommend, let alone prescribe, rates in a § 553 rulemaking we had initiated. However, a rulemaking addressing the substance of cost attribution problems does not entail any such result. It is clear that agencies may make general rules, on the basis of experience and expertise and a proper rulemaking record, which will affect the outcome of particular cases if not waived or suspended. *United States* v. *Storer Broadcasting Co.,* 351 U.S. 192 (1955); *Texaco, Inc.* v. *FPC,* 377 U.S. 33 (1964). The existence of such rules does not contravene hearing requirements that apply to individual cases, as long as the agency provides, as it must, an opportunity to show that the rule should be waived in the particular proceeding. By the same token, if waiver of a rule were desirable, it could be sought and granted in a § 3622 proceeding of the customary kind. The issue involved would be fully treated in a recommended decision that would come before the Governors.

A related argument involves the supposed unavailability of § 3628 judicial review. However, as § 3603 makes clear, a Commission rulemaking order is subject to review under ch. 7 of the Administrative Procedure Act, at least to the extent preenforcement review of rulemaking is generally available under those provisions. If preenforcement review is not made available, then the application of the rule in a particular case—an issue which, as noted, can be raised by a request for waiver—can be tested under § 3628 when the Commission and Governors have concluded their proceedings.

Some commenters argue that addressing cost attribution issues in a § 553 rulemaking would deny the trial-type hearing guaranteed by § 3624. We have noted above that no rule capable of governing the outcome of a case required to be decided on the hearing record can properly be made "waiver-proof." The existence of the possibility of waiver means, in turn, that on the issue covered by the rule a trial-type hearing of the customary kind will be available—since, in the absence of the rule, the issue is open for full trial-type decisionmaking. That the party wishing the rule not to be applied then has the obligation to support the waiver does not mean that a hearing has been denied.

In addition, we note that not every issue is susceptible of iterative evidentiary proof in case after case. Some issues have little or no case-specific application, but represent choices of principle or broad policy—even if they are sometimes addressed by expert witnesses appearing in § 3622 proceedings. If this were not so, we might find ourselves compelled to reconsider ab initio, in one rate case after another, the validity of such concepts as volume variability or specific fixed costs.[4]

In short, we cannot accept the arguments that limits on our authority or jurisdiction compel us to refrain from instituting this proceeding. The matters discussed above—particularly the necessity to allow a waiver mechanism for any rule which governs the substance of a costing question—may indeed counsel on strictly practical grounds against making some possible rules. On this point, many of the comments contain cogent arguments. As

[2] Section 3603 reads: The Postal Rate Commission shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under this chapter. Such rules, regulations, procedures, and actions shall not be subject to any change or supervision by the Postal Service.

[3] Some commenters emphasized, in this connection, the relative narrowness of the Commission's statutory assignment, citing Governors of the U.S. Postal Service V. PRC, 654 F.2d 108 (D.C. Cir. 1981). The key distinction, under that case, is that any Commission action must be within our assigned functions—which are indeed less broad than those assigned to some other regulatory agencies. Once it is seen that a function is among those delegated to us (as costing is) our authority under § 3603 is as broad as that conveyed by any other "necessary and proper" clause.

[4] *Cf.* National Association of Greeting Card Publishers v. U.S. Postal Service, 462 U.S. 810, 829–830 (1983).

we have noted, the purpose of the proceeding is to facilitate rate case decisionmaking; any possible action will be evaluated from that point of view.

Potential scope of this proceeding. We will at this stage simply outline in general the types of results that this investigation might generate.

As indicated, we have some doubt regarding the usefulness of substantive rules that directly enact an attribution method for future application. As some commenters have observed, there is little use for generic rules when only one entity is subject to rate regulation under them. Moreover, the history of our proceedings shows that attribution techniques most often are controverted either fundamentally or not at all. We would therefore expect such substantive rules—at least those on difficult issues—to be frequently subject to motions for waiver. If this is true, it is questionable whether they would save time or resources in rate proceedings.

We do not eliminate the possibility that one or more such rules may be appropriate but we are focusing this proceeding on potential actions other than substantive rules directly imposing specific attribution methods.

Some procedural rules, in the form of amendments to existing filing requirements, may be proposed as a result of this proceeding. We have recently revised rules 31 and 54 [39 CFR 3001.31, 54] in Docket No. RM85-2, and are considering further changes in Docket RM86-1. These proceedings exemplify the link between procedural requirements and data improvements affecting the rate case record. Similarly, we are currently reviewing our periodic reporting system [39 CFR 3001.102], to improve its data-supplying potential. It must be borne in mind that all these mechanisms, despite their differences from the present proposal, have in common with it the object of improving and expediting rate decisions. This proceeding could build upon these efforts and identify specific data or presentations of data that will be deemed necessary to satisfy, or could be used to improve, our rules governing form and content of formal rate requests.

Besides filing requirements expressed in the rules of practice, we may propose statements of general policy on costing issues. This could be our choice if our accumulated experience, plus the materials generated by this proceeding, convince us that one costing approach is prima facie preferable to others (or, indeed, if one or more approaches seem to have such deficiencies as to make them *unlikely* to be approved). Such statements are not binding, as a rule would be, and the question of waiver does not arise. They can be helpful, however, as indicating the way in which we are most (or least) likely to exercise our discretion as to costing approaches. They can thus not only reduce the areas of controversy but also help parties plan their presentations and arguments in advance of the filing of a case.

Statements of general policy can also be used not to reflect likely directions for decision on the merits but simply to define the problems that will be addressed through evidence and argument when cases are actually filed. For example, a proceeding like the present one can lead to a definite expression—or even general agreement—on the categories of evidence needed to arrive at an optimal decision on a particular issue—for example: Is economic theory evidence required for decision on issue "X"? Can issue "Y" be best addressed through engineering studies or regression analysis? Are normal menagment data systems producing adequate data to resolve issue "Z", or should supplementary studies be performed?

Finally, we should not neglect the value of this investigation in improving the general understanding of a costing problem even if, as to it, we decide to issue neither a rule nor a policy statement. Such increased understanding can also improve the handling of rate cases under section 3622.

Initial steps. As noted in Order No. 627, we have already identified some areas for improvements in costing. Particulary important are our Docket R84-1 requests for more study, or more information, directed in the first instance to the Postal Service, as the source of all relevant data. Since Appendices J and, particulary, K of the Docket R84-1 decision furnish a potential agenda for this proceeding, we have determined to begin by asking the Postal Service to report any progress it has made on the requests set forth in those Appendices. This report should be filed with the Commission by January 21, 1986.

Following receipt of this report, we will consider scheduling an intitial conference. Other participants [5] are urged to formulate and submit in writing both issues they wish to have taken up and, at the same time, the scope and nature of the supporting materials—whether evidentiary or argumentative—they would file in support of their positions. These proposals should be filed with the Commission on or before February 10, 1986. The Commission will make the Service's report, and any additional proposals and statements received, available to participants before any initial conference is held.

Since one of the advantages of proceeding outside the rate case context is our ability to use less formal techniques, we will not now lay down a schedule of procedural steps. We do, however, wish to make certain basic propositions clear. First, all proceedings will be public and open to all interested participants. Second, we will not adopt any rule or statement of policy without first affording opportunity to comment on a specific proposed text thereof. General discussion at a conference, for example, would not be treated as notice of a rule or policy statement. Before issuing a final rule or statement, we will embody our conclusions as to the most suitable draft document in a **Federal Register** notice and allow comment pursuant to 5 U.S.C. 553.

We are directing the Director of the Office of the Consumer Advocate, Stephen A. Gold, Esq., to participate in all phases of his proceeding in accordance with this responsibilities under 39 CFR 3002.7 and Part 3002, Appendix A, including the presentation of issues and supporting materials in the manner just described.

The Commission orders:

(A) A proceeding is hereby instituted pursuant to 39 U.S.C. 3603 and 3622, for the purposes described above.

(B) The Office of the Consumer Advocate is designated as a participant in all phases of this proceeding.

(C) The Secretary shall publish this Notice and Order in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

This order asks for a report on any progress the Postal Service has made on requests the Commission made in Docket No. R84-1. The report should separately address each of the following items identified in that decision. Items 1 through 7 are found in Appendix K, PRC Op. R84-1.

1. A new system for tracking purchased transportation costs for examination and comment before it

[5] We will treat every party that filed comments on Order No. 627 as a participant in the further proceedings. Others may file a notice of intent to participate with the Secretary of the Commission. Of course, if notices of proposed rulemaking are issued subsequently, there will be general opportunity to comment, regardless of whether the commenter has participated in earlier stages.

makes a final determination on implementation.

2. When the automated processing system is in place, a study that captures all the additional costs to the Postal Service of handling nonstandard First-Class Mail.

3. In the event of change in the method for counting business reply pieces (for purposes of determining postage due), a new cost study for the adjusting of rates.

4. Collection, on a recurring basis, of Express Mail volume distribution by weight and zone. This information is particularly important with regard to pieces paying the uniform rates.

5. A review of the workers' compensation liability net discount rate, on a regular basis. We anticipate that the results of those reviews will be included in the next rate filing.

6. Direct analysis of differences in marginal or incremental processing costs between preferential and nonpreferential mail, either within the framework outlined in this docket by Dr. Panza (PRC Op. R84-1, paras. 3181-82), or by adapting the MPCM, as necessary, so that parametric runs can be made that vary nonpreferential, and preferential mail volumes, respectively, holding other revelant parameters constant (para. 3176); and so that parametric runs can be made that vary preferential and nonpreferential service standards, respectively, holding other relevant parameters constant (para. 3182).

7. Areas for review, mentioned in Appendix J:

a. Cost Segment I—functional analysis of postmaster costs (p. 7)
b. Cost Segment II—
  (1) Attribution of fixed supervisory costs involving one function (p. 6)
  (2) Data on functions performed by supervisors on loan to other status (p. 9)
  (3) Improvements in the analysis of Activity Code 6630 (p. 10)
c. Cost Segment III—
  (1) Data on functions performed by clerks on loan to other status
  (2) Further analysis of costs of opening and closing windows, and clerk time involving stamp sales (pp. 7-11)
d. Cost Segment VII—
  (1) Evaluation of carrier route time on zig-zag routes (p. 15)
  (2) Park-and-loop route time
  (3) Feasibility of a time series approach in calculating coverage variability (pp. 31-32)
  (4) Reconsider treating retrace time as part of access time (p. 35)
  (5) Correction of instrument bias in measuring load time
  (6) Separate analysis of costs incurred from collecting mail at delivery points (p. 47)
  (7) Treatment of customer contact time (p. 49)
  (8) Re-examine non-delivery walk and drive time on special purpose routes (p. 53)
e. Cost Segment VIII—
  (1) Analysis of effect of preferential mail standards on VSD cost (p. 4)
  (2) Analysis of load time in the context of long-run volume variability (p. 5)
f. Cost Segment XII—variability analysis of costs to maintain vehicles providing depot, interstation, intercity, airport, relay, collection, and miscellaneous services (p. 4)
g. Cost Segment XX—data disaggregating advertising and sales promotion by class of mail

8. The Postal Service indicated that a portion of the activities identified as the rural feature (box delivery and other retail services) are similar to rural carrier activities. The Postal Service should provide information on the study concerning the nature and costs of these contracts. PRC Op. R84-1, App. J, Cost Segment XIV, ¶¶ 0027-30.

9. During the time Docket No. R84-1 was pending, the Postal Service decided to merge all second class into the preferential network. The Service should provide any studies or analyses showing a breakout of the cost consequences of that action. PRC Op. R84-1, ¶ 5266.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14808 (File No. 812-6229)]

State Street Bank and Trust Co.; Notice of Application Permitting Foreign Custody Arrangement

November 21, 1985.

Notice is hereby given that State Street Bank and Trust Company ("Applicant") filed an application on October 21, 1985, requesting an order of the Securities and Exchange Commission (the "Commission"), pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant, and each registered management investment company for which it serves as custodian or subcustodian (other than an investment company registered under section 7(d) under the Act) from the provisions of section 17(f) under the Act to the extent necessary to permit the securities and other assets of such companies to be maintained in the custody of Applicant's indirect, wholly-owned subsidiary, State Street London Limited (the "Trust Company"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions thereof.

According to the application, Applicant was organized as a bank and trust company under the laws of the Commonwealth of Massachusetts and is a member of the Federal Reserve System. Applicant, a wholly-owned subsidiary of State Street Boston Corporation, a bank holding company, currently serves as custodian or subcustodian for the assets of approximately 487 registered management investment companies, together having aggregate net assets in excess of $174 billion (United States). Applicant represents that because an increasing number of investment companies have investment policies permitting investment of their assets in securities of foreign issuers which are traded primarily in markets outside the United States, it provides foreign custody services to such companies by using a network of subcustodians that presently includes foreign banks and trust companies, foreign securities depositories and Applicant's branch offices in London, England. This service, Applicant's Global Custody Network, presently uses the facilities of 19 foreign banking institutions and 7 foreign securities depositories.

Applicant states that its London branch offices operate its London Securities Clearance Facility ("Clearance Facility") that provides a variety of securities-related services such as, maintaining custody of securities in the United Kingdom for United States investment companies and employee benefit plan clients and acting as a clearing agent for United Kingdom banks and stockbrokers effecting securities transactions in the United Kingdom. Applicant also states that it plans to have the Trust Company, which was incorporated on July 23, 1985, as a wholly-owned subsidiary of State Street International Holding Ltd., which is a wholly-owned subsidiary of Applicant, assume the activities of the Clearance Facility. The Trust Company will perform the securities handling and processing services that the Clearance Facility currently performs, and proposes, subject to the issuance of the order requested herein, to act as the custodian for securities held in the

United Kingdom by Applicant's United States investment company clients. Applicant represents that as an indirect subsidiary of Applicant, the Trust Company is subject to the supervision of the Federal Reserve Bank of Boston. Applicant further represents that it is required to report to the Bank of England on the operations of the Trust Company and that its operations in the United Kingdom are subject to the supervision of the Bank of England.

Applicants submits that in order to qualify as an eligible foreign custodian under rule 17f-5 under the Act, a foreign banking institution which is a direct or indirect subsidiary of a United States bank or bank holding company must, among other things, have shareholders' equity of at least $100 million (U.S. dollars or the equivalent thereof). Applicant proposes to establish the Trust Company with shareholder's equity of $353,000 and, thus it will not satisfy the $100 million shareholders' equity requirement contained in Rule 17f-5 under the Act.

Accordingly, Applicant requests an order, exempting Applicant and the registered management investment companies for which Applicant may serve as custodian or subcustodian (other than an investment company registered under section 7(d) of the Act) from the provisions of section 17(f) under the Act to the extent necessary to permit the securities and other assets of such registered investment companies to be maintained in the custody of the Trust Company, subject to the condition that each custody agreement pursuant to which Applicant is authorized to delegate its duties and obligations to the Trust Company provides that any such delegation would not relieve Applicant of any responsibility for any loss due to such delegation except such loss as may result from: (a) Political (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) or (b) other risk of loss (excluding a bankruptcy or insolvency of the Trust Company not caused by a political risk) for which neither Applicant nor the Trust Company would be liable (e.g., losses due to Acts of God, nuclear incident and the like, despite the exercise of reasonable care).

In support of the exemptive relief requested, Applicant represents that the custody arrangements involving the Trust Company would be subject, in all other respects, to the requirements of Rule 17f-5 under the Act. According to the application, Applicant believes that the use of the Trust Company to maintain custody of securities and other assets of Applicant's U.S. investment company clients would be consistent with the purposes intended to be furthered by section 17(f) under the Act because the Trust Company will maintain custody of such assets in a manner that will adequately protect such assets against loss. Furthermore, although Applicant will not be responsible for losses due to political risks, it asserts that its liability under its agreements with its investment company clients will not be diminished through its use of the Trust Company to hold custody of securities in the United Kingdom because of the contractual provision that would be required under the terms of the order requested in the application. Applicant notes that that provision, in essence, would make Applicant responsible for the performance of custody services by the Trust Company, as though Applicant were itself providing such services, and for the continued solvency of the Trust Company.

Applicant asserts that the Trust Company is especially well qualified to act as a custodian, on the basis of Applicant's and the Clearance Facility's substantial experience in providing efficient and effective custody services. According to the application, the procedures used by the Trust Company to safeguard and maintain investment company assets will be the same as those that have been used by Applicant in the operation of its London branches, whose employees will be staffing the Trust Company's custody operations. Therefore, Applicant submits that the exemption it requests would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28211 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14806 (File No. 812-6242)]

Tax-Free Income Portfolios, Inc.; Notice of Application for an Order Permitting Assessment and Waiver of Contingent Deferred Sales Load

November 20, 1985.

Notice is hereby given that Tax-Free Income Portofolios ("Applicant"), 120 South LaSalle Street, Chicago IL 60603, filed an application on November 4, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the assessment (and waiver) of a contingent deferred sale load ("DCSL"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it is organized as a Massachusetts business trust and is registered under the Act as an open-end, management investment company. Applicant further represents that Kemper Sales Company ("KSC") serves as its principal underwriter, distributor and administrator pursuant to a written distribution services agreement, and that Kemper Financial Services, Inc. ("KFS") serves as its investment adviser.

According to the application, Applicant will not impose a traditional front-end sales charge on purchases of its shares. However, Applicant proposes to impose a CDSL with respect to certain redemptions of shares, the proceeds of which will be paid to KSC to reimburse it for costs incurred in selling Applicant's shares. Applicant represents that the CDSC will be imposed, except as noted below, if an investor makes a partial or complete redemption of shares within certain specified periods, Applicant represents that in no event will the CDSL exceed 3.5% of total cost of the shares purchased and that no CDSL will be imposed on amounts derived from (1) increases in the value of an account, including reinvestment of dividend income and capital gain distributions, or

(2) purchases made more than six years prior to the redemption.

Applicant states that the CDSL will be calculated by determining the year of the purchase payment that is the source of the redemption and applying the appropriate percentage to the amount of the redemption subject to the CDSL. Applicant states that the amount of the CDSL will be 3.5 percent if the redemption occurs during the first twelve month period following the date the shares being released were purchased; 3.0 percent during the next 12 month period; 2.5 percent during the third twelve month period and so on, declining by 0.5 percent each year until the DCSL reaches zero percent during the seventh and subsequent years following the date of purchase.

Applicant states that in determining whether to assess a CDSL, shares held the longest are assumed the first to be redeemed. In addition, Applicant represents that no CDSL will be applicable to exchanges of shares between its different portfolios. Moreoover, Applicant states that it will waive the CDSL in the event of death of the shareholder and that such waiver is applicable where the decedent is either an individual shareholder or owns the shares with another individual as a joint tenant with right of survivorship.

Applicants assert that the CDSL does not restrict an investor from receiving his proportionate share of current net assets, but rather, merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. Applicant alleges that the CDSL functionally qualifies as a "sales load" under section 2(a)(35) of the Act because it is paid to KSC to reimburse it for expenses related to the sale of Applicant's shares and that making the charge contingent upon an event which may never occur does not change its nature. Applicant also asserts that the imposition of a CDSL upon redemption instead of a sales charge at the time of purchase does not cause an investment to receive less than a price on the current net assest value of the shares redeemed. Therefore, Applicant asserts further asserts further that the proposed transactions do not cause its securities to fall outside the meaning of "redeemable securities" under section 2(a)(32) of the Act. Similarly, Applicant submits that implementation of the proposed CDSL is not violative of section 22(c) of the Act or Rule 22c-1 thereunder. According to the application, the price of Applicant's shares upon redemption will always be based on current net asset value. The CDSL will merely be deducted at the time of redemption in arriving at the shareholder's redemption proceeds. However, in order to avoid any possibility that questions might be raised as to the potential applicability of sections 2(a)(32), 2(a)(35), and 22(c) of the Act and Rule 22c-1 thereunder, Applicant requests an exemption from those provisions to the extent necessary to permit the imposition of the proposed CDSL.

Applicant also requests an exemption from section 22(d) in order to allow it to waive the CDSL under the circumstances described above. Applicant represents that such waivers will be fully disclosed in its prospectus and that there will be no discrimination among the members of each class who would benefit from the waivers.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 16, 1985, at 5:30 p.m., do so by submiting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28209 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22639; File No. SR-NYSE-85-40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of New York Stock Exchange, Inc. Relating to Modification of Transaction Charges

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 12, 1985, the New York 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 proposed rule change consists of modification of Transaction Charges, as of January 1, 1986, as follows:

Current	Proposed
Agency:	
.75% of Equity Commissions less clearing fees paid out.	.75% of Equity Commissions less clearing fees paid out.
11.0¢/100 shares first 5,000 shares.	11.0¢/100 shares first 5,000 shares.
[1.1¢/100 shares over 5,000 shares].	*.6¢*/100 shares over 5,000 shares.
Floor Brokerage:	
[1.2% of floor brokerage earned].	*1.1% of floor brokerage earned.*
(1.2)% of floor brokerage paid out.	(1.2)% of floor brokerage paid out.
System Orders:	*25¢* credit per eligible order placed through the Common Message Switch. (See Purpose of Proposed Rule Change for definition of eligible order.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose 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. Purpose of Proposed Rule Change

The purpose of this change is to reduce Transaction Charges for all firms. Components of both agency and floor brokerage charges have been reduced as well as the inclusion of a 25¢ credit for each round lot or partial round lot equity order of 2,099 shares or less routed through the Common Message Switch, claimable in the month of the orders' first execution, whether partial or complete. This credit includes market and limit orders and includes orders routed to booths as well as posts.

Statutory Basis for the Proposed Rule Change. The statutory basis for the proposed rule change is Section 6(b)(4) of the Securities Exchange Act of 1934 which requires that the "rules of the exchange provide for the equitable allocation of reasonable dues, fees, and

other charges among its members and issuers and other persons using its facilities".

B. Burden on Competition

The proposed rule change will impose no burden on competition.

C. Comments on the Proposed Rule Change received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file tax 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 communciations 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 provision 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 the file number in the caption above and should be submitted by December 17, 1985.

Dated: November 20, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28203 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 20, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

New York Times Company
  Class A Common Stock, $0.10 Par Value (File No. 7-8678)
CalFed, Inc.
  Common Stock, $1.00 Par Value (File No. 7-8679)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 11, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28205 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 20, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Crystal Brands, Inc.
  Class A Common Stock, No Par Value (File No. 7-8658)
Kenner Parker Toys, Inc.
  Common Stock, No Par Value (File No. 7-8659)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 11, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28204 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer—Kenneth Fogash (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

Proposed extension of Regulation S-X

[17 CFR Part 210] SEC File No. 270-3.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted Regulations S-X [17 CFR Part 210] for approval of an extension of clearance.

The potential respondents include all entities that file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Submit comments to OMB Desk Officer: Sheri Fox (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Dated: November 22, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28202 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw From Listing and Registration; the Standard Products Co.; Common Stock, $1.00 Par Value (File No. 1-2917)

November 21, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Standard Products Company in making its decision to withdraw the common shares from listing and registration considered the costs of maintaining the dual listing of the common shares on the NYSE and Amex. The issuer does not see any advantage in the dual trading of the common shares and believes that dual listing would fragment the market for such shares.

Any interested person may, on or before December 12, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28210 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

November 20, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities.

Adobe Resources Corp.
  Common Stock, $0.01 Par Value (File No. 7-8660)
Bear Stearns Companies, Inc.
  Common Stock, $1.00 Par Value (File No. 7-8661)
Cenergy Corp.
  Common Stock, $0.25 Par Value (File No. 7-8662)
Diamond Shamrock Offshore Partners Ltd.
  Units of Limited Partnership Interest (File No. 7-8663)
Fireman's Fund Corporation
  Common Stock, $1.00 Par Value (File No. 7-8664)
Hazelton Labs Corp.
  Common Stock, $0.10 Par Value (File No. 7-8665)
Interstate Securities Inc.
  Common Stock $0.20 Par Value (File No. 7-8666)
LAC Minerals Ltd.
  Common Stock, No Par Value (File No. 7-8667)
ML Convertible Securities Inc.
  Captial Shares, $0.10 Par Value (File No. 7-8668)
Pullman-Peabody Co.
  Common Stock, $0.10 Par Value (File No. 7-8669)
Travelers Corp.
  $4.16 Cum. Conv. Exchange A Pfd., No Par Value (File No. 7-8670)
Rockefeller Center Properties Inc.
  Common Stock, $0.01 Par Value (File No. 7-8671)
Snyder Oil Partners
  Units of Limited Partnership Interest (File No. 7-8672)
Union Exploration Partners, Ltd.
  Limited Partner Units (File No. 7-8673)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 11, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28206 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 21, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Patrick Petroleum Company
  Common Stock, $0.20 Par Value (File No. 7-8680)
Crystal Brands, Inc.
  Common Stock, No Par Value (File No. 7-8681)
Kenner Parker Toys, Inc.
  Common Stock, No Par Value (File No. 7-8682)
Adobe Resources Corporation
  12% Preferred Stock (File No. 7-8683)
Abode Resources Corporation
  8% Convertible Preferred Stock (File No. 7-8684)
AOI Coal Company
  Common Stock, $0.30 Par Value (File No. 7-8685)
Cigna Corporation
  $4.10 Cumulative Convertible Exch. C Preferred Stock (File No. 7-8686)
Morgan Keegan, Inc.

Common Stock, $0.625 Par Value (File No. 7-8687)
Getty Petroleum Corporation
Common Stock, $0.10 Par Value (File No. 7-8688)
CalMat Co.
Common Stock, $1.00 Par Value (File No. 7-8689)
Pansophic Systems, Inc.
Common Stock, No Par Value (File No. 7-8690)
General Motors Corporation
Class H Common Stock (File No. 7-8691)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28208 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

November 20, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Ensearch Exploration Partners, Ltd.
Depositary Units (File No. 7-8674)
Intelogic Trace, Inc.
Common Stock, $0.01 Par Value (File No. 7-8675)
Freeport-McMoRan Oil & Gas Royalty Trust
Units of Beneficial Interest (File No. 7-8676)
Diamond Shamrock Offshore Partners, Ltd.
Depositary Units (File No. 7-8677)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 11, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28207 Filed 11-25-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 151, Airborne Microwave Landing System (MLS) Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing System (MLS) Area Navigation Equipment to be held on December 16-18, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005 commencing at 1:00 p.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Meeting Held on September 25-27, 1985; (3) Review and Discuss Special Committee 137 (Airborne Area Navigation Systems) and the European Organization for Civil Aviation Electronics (WG-27) Activities; (4) Reports of Working Group Activities; (5) Review of Task Assignments from Previous Meeting; (6) Review Fifth Draft of Committee Report on Minimum Operational Performance Standards for Airborne MLS Area Navigation Equipment; (7) Working Groups Meet in Separate Sessions; (8) Committee Meeting in Plenary Session; (9) Assignment of Tasks; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain further information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 15, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-28129 Filed 11-25-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Anne Arundel County, MD

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/4(f) Evaluation is being prepared for the proposed construction of Maryland Route 100 from Maryland Route 3 to US Route 1.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineers, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, telephone 301/962-4010, and/or Mr. Louis Ege, Acting Chief, Bureau of Project Planning, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/659-1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation, with the Maryland State Highway Administration, is preparing an Environmental Impact Statement/4(f) Evaluation to develop an acceptable alternate to complete Maryland Route 100 between Maryland Route 3 and US Route 1.

In addition to the No-Build, three Build alternates are under consideration.

Alternate 2—Six-Lane Urban Arterial

Beginning at the existing MD 100/MD 3 interchange, Alternate 2 proposes a highway on new location tying into existing MD Route 176, east of MD Route 652. Two options are being considered for this segment, one to the west and one to the east of the McPherson neighborhood. Alternate 2 would then utilize the existng MD Route 176 corridor to west of the MD Route 295 interchange. At this point, it would depart MD Route 176 on new location, north of the community of Dorsey, to a tie-in with existing MD Route 100, west of Route I-95.

Alternate 3—Multi-Lane Freeway With Full Control of Access

This freeway alignment would be constructed on new location to the south of MD Route 176, crossing MD Route 652 near its intersection with MD Route 170, and tie-in to MD Route 176 at the MD Route 295 interchange. West of MD Route 295, the freeway would follow the Alternate 2 alignment on new location, traveling north of the community of Dorsey to a tie-in with existing MD Route 100, west of Route I-95.

Alternate 4—Multi-Lane Freeway With Full Control of Access

Beginning at the existing MD 100/MD 3 interchange, Alternate 4 would follow the westerly option of Alternate 2 to tie-in with existing MD Route 176, just east of MD Route 652. From here, Alternate 4 would traverse a corner of the Baltimore-Washington International Airport, crossing MD Route 170 approximately one mile north of MD Route 176, and continuing west to Valley Road. At this point, two options exist. The northern option would traverse MD Route 295 and Patapsco State Park on new location, tying-in to Alternate 2 just west of the B & O Railroad, and following the Alternate 2 alignment to existing MD Route 100. The southern option would be constructed on new location, tying-in to Route 176 at the MD Route 295 interchange, and follow the Alternate 2 alignment to existing MD Route 100.

An alternates public meeting has been held. A public hearing will be held after circulation of the Draft EIS/4(f) Evaluation. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The Draft EIS/4(f) Evaluation will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: November 15, 1985.

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 85-28107 Filed 11-25-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: November 14, 1985.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco, and Firearms

OMB No.: 1512-0002
Form No.: ATF F 1600.7
Type of Review: Revision
Title: ATF Distribution Center Contractor Survey
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Office of the Secretary

OMB No.: 1505-0088
Form No.: BL-3
Type of Review: Revision
Title: Treasury International Capital Form
Clearance Officer: Gary A. Lee (202) 566-3114, Office of Data Management, Office of the Assistant Secretary (International Affairs), Room 5453, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85-28142 Filed 11-25-85; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Dept. Cir.—Public Debt Series—No. 34-85]

Treasury Notes of November 15, 1988, Series U-1988

Washington, November 15, 1985.

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 November 15, 1988, Series U-1988 (CUSIP No. 912827 SX 1), 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 November 26, 1985, and will accrue interest from that date, payable on a semiannual basis on May 15, 1986, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1988, 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-succeeding 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. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000 and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

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, Tuesday, November 19, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 18, 1985, and received no later than Tuesday, November 26, 1985.

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 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 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 Tuesday, November 26, 1985. 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 Friday, November 22, 1985. 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 Tuesday, November 26, 1985. 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 forfeitted to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

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, to insure and deliver the Notes on full-paid allotments, and to maintain, service, and make payment of 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.

George Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-28248 Filed 11-22-85; 1:43 pm]

BILLING CODE 4810-40-M

[Dept. Circ.—Public Debt Series—No. 35-85]

Treasury Notes of November 15, 1995, Series D-1995

Washington, November 15, 1985.

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 $7,000,000,000 of United States securities, designated Treasury Notes of November 15, 1995, Series D-1995 (CUSIP No. 912827 SY 9), 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 November 15, 1985, and issued November 29, 1985. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1985, to November 29, 1985. Interest on the Notes is payable on a semiannual basis on May 15, 1986, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1995, and will 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-succeeding 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. Notes in registered definitives form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve, Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are description of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures.

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, November 21, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, November 20, 1985, and received no later than Friday, November 29, 1985.

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 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 award 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 purposes 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 customers 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 97.750. 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, wherever the tender was submitted. Settlement must include accrued interest from November 15, 1985, to November 29, 1985. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. 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 Friday, November 29, 1985. 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 Wednesday, November 27, 1985. 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 Friday, November 29, 1985. 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 are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Note to be separated into the components described in Section 6.1., the par amount

of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Notes. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates.

6.3. Only Notes in book-entry form may be separated into their components. Such separation may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on November 15, 1995.

6.5. Each Interest Component will be payable on its particlar due date designed in Attachment A hereto.

6.6. 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-succeeding business day.

6.7. Once a book-entry Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. 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, to issue and deliver the Notes of full-paid allotments, and to maintain, service, and make payment on the Notes.

7.2. 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.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of November 15, 1995, Series D–1995, CUSIP No. 912827 SY 9

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series D–1995 due November 15, 1995, CUSIP No. 912820 AE 7.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) D–1995 Due		Treasury Interest (TINT) D–1995 Due	
May 15, 1986	EG 1	May 15, 1991	ES 5
Nov. 15, 1986	EH 9	Nov. 15, 1991	ET 3
May 15, 1987	EJ 5	May 15, 1992	EU 0
Nov. 15, 1987	EK 2	Nov. 15, 1992	EV 8
May 15, 1988	EL 0	May 15, 1993	EW 6
Nov. 15, 1988	EM 8	Nov. 15, 1993	EX 4
May 15, 1989	EN 6	May 15, 1994	EY 2
Nov. 15, 1989	EP 1	Nov. 15, 1994	EZ 9
May 15, 1990	EQ 9	May 15, 1995	FA 3
Nov. 15, 1990	ER 7	Nov. 15, 1995	FB 1

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 85-28249 Filed 11-22-85; 1:43 pm]
BILLING CODE 4810-40-C

[Dept. Circ.—Public Debt Series—No. 37-85]

Treasury Notes of February 15, 1991, Series H-1991

Washington, November 15, 1985.

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 $7,500,000,000 of United States securities, designated Treasury Notes of February 15, 1991, Series H-1991 (CUSIP No. 912827 SZ 6), 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 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 December 3, 1985, and will accrue interest from that date, payable on a simiannual basis on August 15, 1986, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1991, 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-succeeding 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 moneys. They will not be acceptable in payment of Federal taxes.

2.4 Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5 Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6 The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 27, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 26, 1985, and received no later than Tuesday, December 3, 1985.

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 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 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 successful competitive 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 acceptable 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 Tuesday, December 3, 1985. 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 Friday, November 29, 1985. 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 Tuesday, December 3, 1985. 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 are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

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, to issue and deliver the Notes on full-paid allotments, and to 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,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-28251 Filed 11-22-85; 1:45 pm]

BILLING CODE 4810-40-M

[Dept. Cir.—Public Debt Series—No. 36-85]

Treasury Bonds of 2015

Washington, November 15, 1985.

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 $6,750,000,000 of United States securities, designated Treasury Bonds of 2015 (CUSIP No. 912810 DT 2), hereafter referred to as Bonds. The Bonds 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 Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds 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 Bonds will be dated November 15, 1985, and issued November 29, 1985. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1985, to November 29, 1985. Interest on the Bonds is payable on a semiannual basis on May 15, 1986, and each subsequent 6 months on November 15, and May 15 through the date that the principal becomes payable. They will mature November 15, 2015, 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-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds 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 Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Bonds in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Bonds in book-entry form will be issued in multiples of those amounts. Bonds will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Bonds, exchanges of Bonds between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the

separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsection 2.1. through 2.5. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Bonds offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Friday, November 22, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Thursday, November 21, 1985, and received no later than Friday, November 29, 1985.

3.2. The par amount of Bonds 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 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 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 securitities 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; Federal-insured savings and loan associations; States, and their political subdivision 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 Bonds 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 1/8 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 92.750. That stated rate of interest will be paid on all of the Bonds. 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 Bonds 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 Bonds 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 must include accrued interest from November 15, 1985, to November 29, 1985. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Bonds 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 or or before Friday, November 29, 1985. 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 Wednesday, November 27, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, November 29, 1985. When payment has been submitted with the tender and the purchase price of the Bonds 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 Bonds 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 Bonds allotted are not required to be assigned if the new Bonds are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Bonds are to be registered in names and forms different from those in the

inscriptions of assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Bonds offered by this circular) in the name of (name and taxpayer identifying number)". Specific instruction for the issuance and delivery of the new Bonds, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Bonds will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Bonds in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Bonds have been inscribed.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Bonds. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the issue date until maturiry. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on November 15, 2015.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. 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-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principals Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10 Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal Taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations govering United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. 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, to issue and deliver the Bonds on full-paid allotments, and to maintain, service, and make payment on the Bonds.

7.2. 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 Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this offering circular.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of Nov. 15, 2015, CUSIP No. 912810 DT 2

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2015 due Nov. 15, 2015, CUSIP No. 912803 AE 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury interest (TINT) 2015 due		Treasury interest (TINT) 2015 due	
May 15, 1986	EG 1	May 15, 2001	FN 5
Nov. 15, 1986	EH 9	Nov. 15, 2001	FP 0
May 15, 1987	EJ 5	May 15, 2002	FQ 8
Nov. 15, 1987	EK 2	Nov. 15, 2002	FR 6
May 15, 1988	EL 0	May 15, 2003	FS 4
Nov. 15, 1988	EM 8	Nov. 15, 2003	FT 2
May 15, 1989	EN 6	May 15, 2004	FU 9
Nov. 15, 1989	EP 1	Nov. 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
Nov. 15, 1990	ER 7	Nov. 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
Nov. 15, 1991	ET 3	Nov. 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
Nov. 15, 1992	EV 8	Nov. 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
Nov. 15, 1993	EX 4	Nov. 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
Nov. 15, 1994	EZ 9	Nov. 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
Nov. 15, 1995	FB 1	Nov. 15, 2010	JV 3
May 15, 1996	FC 9	May 15, 2011	JW 1
Nov. 15, 1996	FD 7	Nov. 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
Nov. 15, 1997	FF 2	Nov. 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2012	KA 7
Nov. 15, 1998	FH 8	Nov. 15, 2012	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3
Nov. 15, 1999	FK 1	Nov. 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
Nov. 15, 2000	FM 7	Nov. 15, 2015	KF 6

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 85-28250 Filed 11-22-85; 1:44 pm]
BILLING CODE 4810-40-C

Sunshine Act Meetings

Federal Register
Vol. 50, No. 228
Tuesday, November 26, 1985

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).

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1

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 50, Page No. 47652, Date Published: Tuesday, November 19, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee, (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open meeting scheduled, Friday, November 22, 1985, at 10:30 a.m.: Finance Subsidiaries.

Nadine Y. Penn,
Acting Secretary.
No. 32, November 22, 1985.

[FR Doc. 85-28241 Filed 11-22-85; 10:55 am]
BILLING CODE 6720-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Cancellation of Previously Announced Closed Meeting

The National Credit Union Administration Board has cancelled its previously announced closed meeting, scheduled for November 26, 1985. The meeting was to be held at 11:00 a.m. in Filene Board Room, 7th Floor, at the National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

The previously announced item was:

1. Purchase of Agency Capital Equipment. Closed pursuant to exemption (2).

The item will be rescheduled for the next Board meeting, which will be held December 12, 1985.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.
[FR Doc. 85-28276 Filed 11-22-85; 2:26 pm]
BILLING CODE 7535-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 25, and December 2, 9, and 16, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 25

Monday, November 25

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Tuesday, November 26

2:00 p.m.
Discussion of 1986 Policy and Planning Guidance (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 2—Tentative

Wednesday, December 4

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 9—Tentative

Monday, December 9

10:00 a.m.
Discussion of Threat Level and Physical Security (Closed—Ex. 1)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, December 10

9:30 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex 5 & 7)
2:30 p.m.
Review of Enforcement Policy (Public Meeting)

Wednesday, December 11

10:00 a.m.
Briefing on Policy Statement on Nuclear Power Plant Standardization (Public Meeting) (postponed from November 19)

Thursday, December 12

10:00 a.m.
EEO Program Plan—Progress Report (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 16—Tentative

Tuesday, December 17

2:00 p.m.
Briefing on Nuclear Employee Data System (NEDS) (Public Meeting)

Wednesday, December 18

10:00 a.m.
Briefing on Status of Davis-Besse (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Orders Regarding Environmental Qualification Extension of the November 30, 1985 Deadline for Point Beach Nuclear Plant, Units 1 and 2; Sequoyah Nuclear Plant, Units 1 and 2; Haddam Neck Nuclear Plant; Donald C. Cook Nuclear Plant, Unit 2; and Millstone Nuclear Power Station, Unit 1" (PUBLIC MEETING) was held on November 19.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,
Office of the Secretary.
November 21, 1985.
[FR Doc. 85-28281 Filed 11-22-85; 3:30 pm]
BILLING CODE 7590-01-M

federal register

Tuesday
November 26, 1985

Part II

Federal Home Loan Bank Board

12 CFR Parts 543, 546, 552, 563, 574, 584, and 589

Acquisitions of Control of Insured Institutions and Delegated Merger Approvals; Final Rules

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563, 574, 584 and 589

[No. 85-1005]

Acquisitions of Control of Insured Institutions

Dated November 8, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending its regulations implementing the statutory provisions governing the acquisition of control of thrift institutions chartered by the Federal Home Loan Bank Board or whose accounts are insured by the Federal Savings and Loan Insurance Corporation. These regulations are collected in a single new part of the Code of Federal Regulations in order to better coordinate the provisions of the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) (1982), and the Savings and Loan Holding Company Act, 12 U.S.C. 1730a (1982). In brief, the regulations:

—Eliminate the overlap in the application of the Savings and Loan Holding Company Act and the Change in Savings and Loan Control Act and clarify the acquisitions covered by each statute;

—Clarify and provide consistent definitions under both statutes for key terms such as "control," "company," "acting in concert," "person," and "voting stock;"

—Define specifically what constitutes the acquisition of control and minimize uncertainty as to when an application or notice is required;

—State situations which give rise to rebuttable determinations of control and how an acquiror may attempt to rebut these determinations;

—Establish specific presumptions for when persons or companies will be considered to be acting in concert to acquire control of an insured institution, in order to better enable the Board to address acquisitions of control by groups acting in concert;

—Require certifications regarding 10 percent ownership of insured institutions' stock, so that the Board and its staff will be able to examine who are the ultimate owners of insured institutions;

—Clarify, streamline and expedite various applications procedures;

—Provide a uniform type of public notice for holding company applications and change in control notices, including an opportunity for target institutions to register their objections, if any, to the acquisition, as part of the Board's application review process, thereby providing the Board with more information concerning potential acquirors;

—Specify "presumptive disqualifiers" that would put prospective acquirors on notice of factors that would raise concerns about their qualifications to acquire control of an insured institution;

—Implement an enhanced system of delegations, particularly to the Principal Supervisory Agents, including the ability to deny the applications that the Principal Supervisory Agents have delegated authority to approve, thereby speeding up the application process; and

—Provide, overall, a cohesive regulation that furnishes the specific guidance on key issues which is necessary in order to fairly and effectively implement increased use of delegations and promote efficient utilization of the Board's resources.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Attorney (202/377-6453); Laura Patriarca, Deputy Director for Corporate (202/377-6411); or Julie L. Williams, Associate General Counsel, Director (202/377-6459); Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 85-289a, dated April 17, 1985, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation or FSLIC"), proposed extensive revisions to its regulations implementing the statutory restrictions on the acquisitions of control of stock form thrift institutions chartered by the Board or whose accounts are insured by the Corporation. *Acquisitions of Control of Insured Institutions,* 50 FR 16274 (April 25, 1985). The proposal would have revised the Board's regulations implementing the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) (1982) (the "Control Act") and the acquisition provisions of the Savings and Loan Holding Company Amendments of 1967, 12 U.S.C. 1730a (1982) (the "Holding Company Act") (collectively the "Acts"). The proposed revisions were intended to better adapt the Board's rules to the acquisition practices that have become prevalent in the thrift industry while at the same time streamlining the application process by codifying the Board's past interpretations of its rules, increasing the use of delegated authority and otherwise avoiding unnecessary delays in the acquisition review process.

General

A. Background

Acquistions of control of stock form institutions chartered by the Board or whose deposits are insured by the Corporation are generally governed by either the Control Act or the Holding Company Act.[1] Both of these statutes specifically authorize the Board to issue rules and regulations to carry out their purposes. 12 U.S.C. 1730(q)(14); 1730a(h)(1) (1982). The Holding Company Act prohibits any "company," directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, or through one or more transactions, from acquiring control of one or more insured institutions without the prior written approval of the Corporation. 12 U.S.C. 1730a(e)(1)(B) (1982). For purposes of this restriction, the term "company" is broadly defined to include any corporation, partnership, trust, joint-stock company or similar organization, except those controlled by the United States or any State or an officer or instrumentality thereof. *Id.* at 1730a(a)(1)(c). The Control Act applies to acquistions that are not subject to the Holding Company Act. 12 U.S.C 1730(q)(17) (1982). It prohibits any "person," acting directly or indirectly or through or in concert with one or more persons, from acquiring control of an insured institution through a purchase, assignment, transfer, pledge, or other disposition of the "voting stock" (which includes rights and powers with respect thereto), of the institution unless the Corporation has been given sixty days'

[1] Acquisition of control by a company of a mutual form institution also is subject to the Holding Company Act. However, the Holding Company Act prohibits a savings and loan holding company from holding, soliciting, or exercising any proxies in respect to any voting rights in an insured institution which is a mutual institution. 12 U.S.C. 1730a(i)((1) (1982). The Board's Office of General Counsel has interpreted this provision as having the effect of prohibiting a company from acquiring control of a mutual insured institution. *See* Op. G.C. July 20. 1970. Also, in this regard, the Board's other regulations currently prohibit the designation of "any corporation or partnership (including any person acting on behalf of a partnership)" as the holder of a proxy of a mutual insured institution. *See* 12 CFR 569.3(b) (1985). Because a company is precluded from acquiring control of a mutual institution, the Board does not intend the provisions of the Holding Company Act and the regulations adopted today to be applicable to a mutual insured institution.

An individual is not prohibited from acquiring control of a mutual insured institution under the Control Act. The Board has provided regulations which govern the acquisition of control of a mutual insured institution at 12 CFR 563.18-1 (1985). Thus, the regulations adopted today are not applicable to the acquisition of control of a mutual insured institution by an individual.

prior notice and has not objected. *Id.* at 1730(q)(1). Under both Acts, insured institutions include state and federally chartered thrift institutions whose accounts are insured by the Corporation and federally chartered savings banks whose accounts are insured by the Federal Deposit Insurance Corporation, and holding companies thereof, 12 U.S.C. 1730(q)(13)(B); 1730a(a)(1)(A) (1982).

Both statutes employ expansive definitions of control. In the Control Act, the term connotes the power, directly or indirectly, to direct the management or policies of an insured institution. 12 U.S.C. 1730(q)(8)(B) (1982). The Holding Company Act provides that the term includes control in any manner of the election of the majority of the directors of an insured institution. 12 U.S.C. 1730a(a)(2)(A) (1982). Control may also be found under the Holdsing Company Act if the Corporation determines that a person, directly or indirectly, exercises a controlling influence over the management or policies of an insured institution. *Id.* at 1730a(a)(2)(D). And under either statute, control is conclusively determined to exist upon the acquisition of the power to vote more than 25 percent of the voting shares or securities of an insured institution. 12 U.S.C. 1730(q)(8)(B); 1730a(a)(2)(A) (1982).

The Holding Company Act gave the Board comprehensive authority over savings and loan holding companies and their subsidiaries and was intended to guard against the potential conflicts of interest that can occur in the holding company structure. S. Rep. No. 354, 90th Cong., 1st Sess. 1–2 (1967). The holding company regulatory system involves registration and examination of holding companies, and limitations on transactions between an insured institution and its affiliates in a holding company structure, in addition to the prior approval of acquisitions of insured institutions by companies.

The Control Act is more limited in scope, having been adopted to close a "glaring gap" in the jurisdiction of the federal agencies regulating financial institutions,[2] namely, the uncertain applicability of the Holding Company Act to acquisitions by individuals and groups of individuals who did not constitute a "company." H.R. Rep. No. 1383, 95th Cong., 1st Sess. 19 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 9291. Its primary purpose was to give the agencies more authority to scrutinize the qualifications of individuals seeking to acquire control of existing financial institutions. As noted in the resolution in which the Control Act regulations were first promulgated, the Corporation's objectives in administering the Control Act "are to enhance and maintain public confidence in the savings and loan industry by preventing serious adverse effects resulting from anticompetitive combinations of interests, inadequate financial support, or unsuitable management of these institutions." *Amendments Relating to the Change in Savings and Loan Control Act of 1978,* Board Resolution No. 79–121, 44 FR 10500 (Feb. 21, 1979).

Notwithstanding their differences, both statutes reflect a congressional concern with the qualifications of acquirors of insured institutions and serve the same goal of preventing the acquisition of influence over the management and policies of insured institutions in circumstances that might result in injury to the institution, its depositors, or the insurance risk of the FSLIC. Accordingly, the statutes interact to form a comprehensive regulatory framework for acquisitions of control of insured institutions. If the acquiror is a "company," as defined, the acquisition of control is subject primarily to the Holding Company Act. All other control acquisitions would involve the Control Act.

Notwithstanding the commonality of provisions and purpose between the Acts, the Board's implementing regulations have developed along separate paths. The Regulations for Savings and Loan Holding Companies, 12 CFR Parts 583–589 (1985), originally were promulgated in Board Resolution No. 21,400, 33 FR 3322 (Feb. 22, 1968), immediately following the adoption of the Holding Company Act in its current form in the Savings and Loan Holding Company Amendments of 1967, Pub. L. No. 90–255, 82 Stat. 6 (1968) (codified, as amended, at 12 U.S.C. 1730a (1982)). The current provisions of the holding company regulations relating to acquisitions, 12 CFR 584.4 (1985), and the supporting definitions, *id.* at Part 583, essentially repeat the statutory provisions. The current Control Act regulations, however, implement one aspect of the control definition of that statute, by establishing a presumption of control upon the acquisition of more than 10 percent of the voting stock of an insured institution when its shares are traded on an exchange or the NASDAQ System. 12 CFR 563.18–2(c)(2) (1985).

Recent developments in the financial services industry and the general area of acquisitions and takeovers have focused increased attention upon the Control Act and Holding Company Act and their implementing regulations. The shift to the stock form of ownership in the thrift industry also has made more institutions at least theoretically available for acquisition.[3] Thrift institutions additionally have become more attractive acquisition targets since their investment powers were enhanced in the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469 (1982), and under the laws of many states. This increased attractiveness comes at the time when acquistions in general have risen numerically and the techniques used for various types of acquisitions have become increasingly sophisticated. Moreover, the perceived attractiveness of thrifts unfortunately also has led to efforts by financially weak or unstable companies and unqualified and dishonest individuals to acquire and exploit thrift institutions. As a result, substantive as well as procedural weaknesses in the regulations implementing the Holding Company and Control Acts have been too often spotlighted and misused, in some cases ultimately leaving the FSLIC to pay the price for such shortcomings.

Thus, after extensive study, the Board proposed to substantially revise its regulations in order to address these and other concerns. The Board views such a reexamination of the regulations as a necessary part of its statutory responsibility to implement the objectives of both Acts, 12 U.S.C. 1730(q)(14); 1730a(h) (1982), and particularly its duty to prevent evasions of the Holding Company Act. *Id.* at 1730a(h)(1).

[2] The Change in Savings and Loan Control Act was enacted as Title VII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95–630, 92 Stat. 3641, 3687, which included the substantially similar Change in Bank Control Act at Title VI, *id.* at 3683 (codified at 12 U.S.C. 1817(j) (1982)). Jurisidiction under the Change in Bank Control Act is shared by the three federal banking regulators. 12 U.S.C. 1817(j)(1); 1813(g) (1982).

[3] Although the insured thrift industry remains primarily mutual (approximately 1000 stock associations vs. approximately 2000 mutuals as of September 1985) nearly 55 percent of the industry's assets are held by stock institutions. Conversions to stock form have taken place at an accelerated pace in recent years. There were 108 such conversions approved by the Board in 1983. In 1984, there were 100 conversions approved. In addition, all applications for federal *de novo* institutions have involved stock associations since formal processing rules were adopted in Board Resolution No. 83–127, 48 FR 10612 (Mar. 14, 1983).

B. Summary of the Proposal

Under the proposal, the regulatory provisions implementing the Holding Company Act and Control Act restrictions on acquisitions would have been relocated in a single new Part 574 for ease of reference and coordination and to eliminate overlapping and potentially inconsistent requirements. Regulations under the Holding Company Act relating to operations of subsidiary institutions would remain in Part 584. To the extent feasible, the implementing regulations would use common definitions of terms.

The proposal also would have established a coordinated procedure for providing public notice of filings under the Acts without sacrificing the confidentiality of their contents, thereby enhancing the opportunity for comment on a prospective acquisition and increasing the Board's sources of information in connection with its review of acquisitions and changes in control.

The new Part also would have expanded and clarified the use of rebuttable determinations of "control" to provide guidance to acquirors regarding the Board's interpretation of this term. In addition, the proposal would have introduced presumptive disqualifiers" to put applicants on notice of factors that the Board would find particularly meaningful in an application or notice and that may be deemed to disqualify a potential acquiror if not adequately rebutted.

Finally, the revisions were designed to coordinate with expansion of the authority delegated to Principal Supervisory Agents to approve and deny applications and notices and thus to expedite the processing of applications by eliminating unnecessary delays in the review process.

In proposing all of the foregoing, the Board stated its belief that by codifying past interpretations of the regulations and statutes, compliance with their requirements would be facilitated, applications processing would be expedited, and overall investment in the thrift industry would be encouraged as a result of the existence of clear and consistent ground rules. This continues to be the Board's belief, and for that reason the Board is proceeding to adopt the regulations described herein.

C. Overview of Comments

In response to the proposed amendments, the Board received 19 comment letters: ten from law firms, five from trade associations, and four from insured institutions. Most commenters generally favored the proposed amendments, citing the greater certainty that would be provided to potential acquirors and insured institutions and the clarified participatory role for target institutions. The comments varied widely. Some commenters contended that the Board had attempted to promote the entrenchment of insured institution management. Other commentors advocated the need to restrict unscrupulous acquirors, stating "the proposals do not go far enough to address control abuses in the thrift industry." There were also many useful technical changes suggested to foster a more cohesive regulatory structure. After considering the comment letters and other available information, the Board has determined to adopt the amendments substantially as proposed, with certain changes discussed below.

Definitions

A. "Acquire"

Both statutes refer to acquisitions of control in their operative provisions. 12 U.S.C. 1730(q)(1); 1730a(e)(1)(B) (1982). In the majority of cases, an acquisition of control will involve the acquisition of ownership of a security of the insured institution. *See* 12 U.S.C. at 1730(q)(1); 1730a(a)(2)(A). The acquisition of securities is particularly emphasized in the Control Act, which deals with acquisitions of control through "a purchase, assignment, transfer, pledge, or other disposition of voting stock". 12 U.S.C. 1730(q)(1) (1982). In administering the statutes, the Board and its staff have scrutinized a variety of arrangements which, while not characterized as outright sales, served to vest another person with the operative attributes of ownership or control of the security. The new definition of "acquire" is the result of this experience.

The new definition of "acquire" is intended to clarify the point in time when an acquiror is deemed to have gained control of an insured institution in the context of obtaining the institution's stock. An acquiror would be deemed to acquire the stock whether it holds such stock directly or indirectly, such as through another entity which it controls. The definition also incorporates the notion that an acquiror will be deemed to have acquired stock through one or more transactions. Generally, the stock of an insured institution could be acquired through a disposition such as a purchase, assignment, transfer, exchange or succession. In addition to beneficial ownership, consistent with the statutory language of both Acts, stock will be deemed to be acquired if a person or company obtains shared or sole voting power or has control over stock by virtue of possessing sole dispositive power with regard to stock.

The Board also has determined that other situations exist in which stock would be deemed to be acquired for purposes of the Acts. For example, the regulations incorporate in the definition of "acquire" an increase in ownership of stock relative to other stockholders through a reduction in the percentage holdings of the shareholders as would occur in a selective redemption or a high ratio reverse stock split in which fractional shares are cashed out. The Board notes that the implementing regulations of other banking agencies already provide that such an increase in proportionate ownership will be deemed an acquisition of voting securities for purposes of the Control Act. *See*, e.g., 12 CFR 225.41(a)(1) (1984) (Federal Reserve Board). The Board views this as an appropriate interpretation of the term "acquire", and, consequently, a stock transaction that causes a material realignment of ownership interests would be deemed an acquisition of control for any person or company whose holdings exceed a control threshold as a result of the transaction.

In the situation where a person's or company's holdings exceeded a control threshold as a result of a stock transaction that was essentially *pro rata* in nature, however, a filing would not be required. In addition, where a stock transaction that was not essentially *pro rata* in nature caused a person or company to exceed a control threshold, and the person or company did not control the stock transaction that resulted in such increase in ownership, the person or company would have 90 days after the effective date of the stock transaction to submit the appropriate notice, application or rebuttal under § 574.3(d).

In the proposal, the Board provided that voting stock also could be "acquired" through the formation of a group by individuals and/or companies which had previously acquired stock of an insured institution individually. The concept that stock of an insured institution is acquired by a group at the time the group is formed is based in part on the determination in both the Control and Holding Company Acts that control exists when persons and/or companies act in concert. *See* 12 U.S.C. 1730(q)(1); 12 U.S.C. 1730a(a)(2)(A). Further, upon formation, the group is, in essence, acquiring the stock held by the individuals and/or companies which comprise the group. Thus, in effect, a disposition of the stock to the group has taken place. The Board notes that the

Securities and Exchange Commission ("SEC") uses a similar interpretation in the rules promulgated under Securities Exchange Act ("Exchange Act") section 13(d), 15 U.S.C. 78m(d) (1982); Exchange Act Rule 13d-5(b), 17 CFR 240.13d-5(b) (1984). Accordingly, the regulation specifies that when two or more persons and/or companies act in concert for the purpose of exercising control over the management or policies of an insured institution, the group formed shall be deemed to acquire the voting stock of such persons. Such an approach is already employed in the Board's regulations governing mutual-to-stock conversions. *See Conversions from Mutual to Stock Form,* Resolution No. 84-400, 49 FR 32340 (Aug. 14, 1984) (codified at 12 CFR 563b.3(i)(8)(iv) (1985)). The Board received no comments challenging its proposed position on the acquisition of stock through the formation of a group.

Although not specifically addressed in the proposal, the Board has recently encountered several situations which presented a question regarding the extent to which an investment advisor would be considered to have acquired the stock of its advisee for purposes of the Acts. For example, both the Control Act and the Holding Company Act deem a person or company to have acquired control of an institution whether acting alone or in concert with others. 12 U.S.C. 1730(q)(1); 12 U.S.C. 1730a(a)(2). As discussed below, the term "acting in concert" is susceptible to extremely broad interpretation. Further, the Holding Company Act defines control to include control of stock, holding with power to vote stock or holding proxies representing stock. 12 U.S.C. 1730a(a)(2). The Control Act also speaks to disposition of rights with respect to stock, which would include voting rights. 12 U.S.C. 1730(q)(1) and 1730(q)(13)(A). It has been the Board's experience that an investment advisor could well control or hold with the power to vote the stock of its advisee within the meaning of the Acts in certain situations, which exist if the advisor votes the stock alone or shares voting power with the beneficial owner or if the advisor provides advice to the beneficial owner concerning the voting of the stock. In order to address the application of the Acts to situations involving investment advisors, the Board has elected to apply the regulations in the same manner as the rules would affect all other parties possessing such control characteristics with respect to stock, but to add what is, in effect; a "safe harbor" for investment advisors. The Board has provided in the regulation that an investment advisor will not be deemed to have acquired the stock of the beneficial owner, irrespective of the general definition of the term "acquire", if the advisor votes the stock in question only upon instructions from the beneficial owner and does not provide the beneficial owner with advice concerning the voting of such stock.

B. "Acquiror"

In the proposal, the term "acquiror" was used to encompass the terms "person" and "company." The use of the term is merely intended to streamline the regulation in sections in which both an individual and a company are subject to the same provisions. The Board received no comments on the definition of "acquiror."

C. "Acting in Concert"

Both the Holding Company Act and the Control Act employ the term "acting in concert." The Control Act regulates acquisitions of control by a "person, acting directly or indirectly or through or in concert with one or more other persons." 12 U.S.C. 1730(q)(1) (1982). The Holding Company Act provides that "a person shall be deemed to have control of * * * an insured institution if the person * * * acting in concert with one or more persons" controls more than 25 percent of the institution's voting stock. 12 U.S.C. 1730a(a)(2)(A) (1982). Taken on its face, the term "acting in concert" is susceptible to a broad interpretation, potentially taking in coordinated action without an agreement among the actors or perhaps even mutual awareness. There is no explanatory discussion of the term in the legislative history of the Control Act. The congressional reports on the Holding Company Act, however, indicate the term "presupposes an agreement or understanding written or tacit, of the parties." S. Rep. No. 997, 90th Cong. 1st Sess. 7 (1967); S. Rep. No. 354, 90th Cong., 1st Sess. 10 (1967). The Board is aware that in proposing its recent revisions to the Change in Bank Control provisions found in Regulation Y, 12 CFR Part 225 (1985), for example, the Federal Reserve Board indicated that it would consider persons acting in concert if they "joined together informally through parallel action or intention for the purpose of acquiring voting securities of a bank or a bank holding company." *Bank Holding Companies and Change in Bank Control, Proposed Revision of Regulation Y;* Docket No. R-0470, 48 FR 23520, 23536 (May 25, 1983).

The proposal set forth a definition of "acting in concert" that reflects the Board's extensive experience in this area and encompasses the Board's views that the term includes (1) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (2) any combination or pooling of voting or other interests in the securities of an issuer for a common purpose, pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise." The Board currently employs the same difinition in a closely related context in § 563b.3(i) to regulate the activities of groups in acquiring the stock of recently-converted insured institutions. *See Conversion from Mutual to Stock Form,* Board Resolution No. 84-400, 49 FR 32340 (Aug. 14, 1984) (codified at 12 CFR 563b.3(i)(8)(iv) (1985).

In order to effectuate the purposes of the Acts, the Board attempted, in the proposal, to provide a reading of the term which would include all groups of individuals and/or companies where a mutual awareness of purpose is coupled with at least a tacit agreement concerning a plan of acquisition of control. Several commentors asserted, however, that the proposed definition of "acting in concert" was too broad and would include groups of individuals who made concurrent purchases of the stock of insured institutions with no plan to control the institution. The Board did not intend that concurrent purchases alone would provide a basis for investors to come within the purview of its definition of "acting in concert." In order to clarify the Board's intent to have the term pertain only to groups where a mutual awareness exists, the Board is modifying the proposed definition to limit "acting in concert" to groups where *interdependent* parallel behavior exists, in addition to situations involving knowing participation among a group towards a common goal. In the Board's view, the definition thus clarified would apply only to groups where the potential to exert a controlling influence exists.

In this regard, the Board notes that in its experience it has encountered several types of situations, involving business, familial or personal relationships where action in concert is typically present. As discussed in more detail below, the Board has provided further guidance on this point by establishing several rebuttable presumptions regarding concerted action. In addition, the Board also wishes to clarify the treatment of situations in which more than one relationship in which concerted action exists or is presumed, that relate to the

same stockholder of an insured institution. In these situations, the Board has determined that unaffiliated third parties who act in concert with a person or company will be presumed to act in concert with each other. For instance, if an individual, a corporation controlled by the individual and the brother of such individual all own stock of an insured institution, the Board's regulations would require all the stock to be aggregated. Such a finding is necessary to avoid situations, as in the above example, where a company could avoid being subject to the ongoing regulation of the Holding Company Act, or where persons could evade the scope of the Control Act. Accordingly, the Board has modified the proposed revisions to provide for aggregation or parties acting in concert by specifically providing in § 574.2(c)(6) that action in concert with another person or company shall also be deemed to be action in concert with any person or company acting in concert with such other person or company.

D. "Affiliate"

The provisions of Part 574 include the definition of the term "affiliate" as it is currently used in the Insurance Regulations, 12 CFR 561.25 (1985). The term is used in the agreement which must be filed by an acquiror that attempts to rebut a determination of control in accordance with § 574.4(e). The Board received no comments on the definition of the term "affiliate", and has adopted it as proposed.

E. "Company" and "Similar Organization"

The term "company" was derived from the Holding Company Act, which defines a "company" as:

> any corporation, partnership trust, joint stock company, or *similar organization*, but does not include the Federal Savings and Loan Insurance Corporation, any Federal Home Loan Bank, or any company the majority of the shares of which is owned by the United States or any State, or by an officer of the United States or any State in his official capacity, or by an instrumentality of the United States or any State. (*Emphasis added*)

In the proposal, the Board clarified the meaning of the term "similar organization" by adding the terms "association, joint venture, pool, syndicate and unincorporated organization." These terms were added to provide certainty in accordance with the legislative history of the Holding Company Act which states that a "company:"

> [encompasses] the types of entities which, because of their capacity to bring together diverse stockholdings and exercies their voting power under single control for substantial periods, would be most likely to be able to raise the necessary capital to finance the acquisition of savings and loan associations and to engage in holding company operations.

H.R. Rep. No. 997, 90th Cong., 1st Sess. 6–7 (1967), reprinted in 1968 U.S. Code Cong. & Ad News 1607.

No comments were received concerning the entities enumerated as "similar organizations" in accordance with the above-cited Congressional direction. However, the Board also attempted to define instances in which a group of individuals and/or companies would come together in a manner that would also constitute a "similar organization". The Board proposed the following definition:

> a group acting in concert where arrangements exist among the participants that provide for allocation of profits, losses or expenses arising in connection with their ownership of stock of an insured institution and for the disposition of their ownership interests, or which provide for either of the foregoing and also provide for the manner of voting of the stock of the insured institution held by the participants;

The Board specifically requested comment on factors that should be considered indicative of status as a company and received five comments concerning the above-cited language, most of which were critical of the definition as being too broad. Some commenters suggested that all individuals who received financing for their acquisition would be required to enter into an agreement which would cause the group to be deemed to be a company. It is not the intent of the Board that all groups of individuals acting in concert be considered companies. In order to better express its intended scope of coverage of the term "company", and in consideration of the application of other aspects of the Holding Company Act to an entity deemed to be a "company" thereunder, the Board has determined to revise its definition of a "similar organization." Further, for ease of reference, the Board has provided a separate definition of the term "similar organization" which is found in § 574.2(l).

The new definition states that the term "similar organization" means a combination of parties which has the potential for or practical likelihood of continuing rather than temporary existence and where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either: (1) The transferability and voting of any stock or other indicia of participation in another entity, or (2) achievement of a common or shared objective, such as to manage or control another entity.

This definition is intended to better address groups which have the attributes that warrant regulation as a holding company. In general, the definition clarifies that a similar organization must have attributes comparable to those companies listed in the definition of the Act: corporation, partnership, trust and joint-stock company. In order to be deemed a similar organization, a group must form through a voluntary combination. Thus, the parties must be aware of and at least implicitly consent to the combination. Such a group, without more, would merely be deemed to be acting in concert. A determination that a similar organization exists additionally would require that the parties to the combination be bound together by legally enforceable means with respect to key aspects of the operation of the group. Further, only where parties may be combined for a prolonged, rather than merely temporary, duration would a similar organization be found. For example, a group that is bound together solely for the purpose of the act of acquiring control of an institution and thereafter was subject to no legally binding relationships of the type described would not be considered a "similar organization."

Finally, the Board believes that even if such a binding relationship with a continuing existence can be identified, a company would be formed for purposes of the Holding Company Act only by groups attempting to achieve certain common objectives. Clearly, voting the stock of the insured institution is an objective intended by Congress which would cause a "company" to exist. The Board believes that other common objectives concerning generally the management or control of an insured institution also would come within the definition of a "similar organization." The Board does not intend, however, to infer the existence of a company where the group of individuals shares a common objective with limited scope that does not pertain to a material aspect of the business or operations of an insured institution. The Board believes that the modified definition of "similar organization" provides clarity and adequately responds to concerns raised by commenters.

F. "Controlling Shareholder"

The regulation defines the term "controlling shareholder" for purposes of the definition of "acting in concert" and the presumptions arising pursuant

thereto in § 574.4(d). A "controlling shareholder" is defined to mean a person who directly or indirectly or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors. This definition is derived from the definition of "controlling person" already used in the Insurance Regulations, 12 CFR 561.28 (1985). For purposes of Part 574, the definition of "controlling shareholder" is used to determine certain presumptions of concerted action in § 574.4(d). The Board received no comments on the definition of the term "controlling shareholder", and has adopted it as proposed.

G. "Immediate Family"

The definition of the term "immediate family" is also taken from the Insurance Regulations and includes: a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister. *See* 12 CFR 561.30 (1985). For purposes of Part 574, a person's stock in an insured institution is aggregated under the concerted action presumption with that of members of his or her "immediate family." The Board received no comments on the definition of the term "immediate family", and has adopted it as proposed.

H. "Insured Institution"

For purposes of Holding Company regulations, "insured institution" currently is defined to include institutions whose accounts are insured by the Corporation, federal associations whose accounts are insured by the Federal Deposit Insurance Corporation, and institutions that retain insurance of accounts pursuant to § 563.29–1. This is also the general definition of "insured institution" found at 12 CFR 561.1 (1985). The current Control Act regulation expands on this definition to include savings and loan holding companies, 12 CFR 563.18–2(b)(4) (1985), implementing the last sentence of 12 U.S.C. 1730(q)(1) (1982). The Board has included all these elements in the definition of "insured institution" for purpose of Part 574. The Board received no comments on the definition of the term "insured institution".

I. "Management Official"

"Management official" as used in the proposal included any president, chief executive officer, vice president, director, partner, or trustee or any other person who performs similar policy-making functions for an insured institution or company, whether incorporated or not. The term would include such officers of subsidiaries if they perform policy-making functions for the parent and would include any person who has representatives or nominees performing such functions. The definition combines elements of Exchange Act Rule 3b–7, 17 CFR 240.3b–7 (1984), and section 210(4) of the Depository Institution Management Interlocks Act, 12 U.S.C. 3201(4) (1982). The term as proposed has been modified to respond to a commenter who was concerned that the term "executive officer" was ambiguous and may not be applied consistently. The Board has replaced the term executive officer with the specific titles of president, chief executive officer, chief operating officer, and vice president. Nevertheless, the Board notes that any person who performs functions similar to the specified executive officers will be deemed to be a "management official." The term "management official" is used for purposes of Part 574 with regard to the control factors of § 574.4(c) and the rebuttal presumptions of concerted action found in § 574.4(d).

J. "Person"

The term "person" is defined in the Holding Company Act to include an individual or a company. 12 U.S.C. 1730a(a)(1) (G) (1982). The Control Act provides a similar definition of person as "an individual or a corporation, partnership, trust, association joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein." 12 U.S.C. 1730(g)(8)(A) (1982). The Board has limited its definition of "person" to an individual or a group of individuals acting in concert that do not constitute a "company" as defined in the regulations.

The Board's purpose in restricting the definition was to further its goal of reducing the overlaps and inconsistencies between the two Acts. The practical effect of such amendment would be to subject natural persons to the Control Act and companies to the Holding Company Act. Under the Board's current regulatory scheme, a company would be subject to the Control Act procedures in order to acquire between 10 and 25 percent of the voting stock of certain insured institutions. *See* 12 CFR 563.18–2(c)(2) (1985). In that circumstance, the Board's regulations would cause the company to be deemed in control of the insured institution for purposes of the Control Act, yet not in control of the insured institution for purposes of the Holding Company Act.

As is discussed in detail below, both Acts provide substantially the same definition of "control." The revised definition of "person" therefore serves to eliminate the inconsistent application of substantially similar terms. Further, after a company had received clearance to acquire "control" of an insured institution under the Control Act, the company would be required to receive Board approval to again acquire "control" under the Holding Company Act prior to acquiring an aggregate of more than 25 percent of the voting stock of the insured institution. The revised definition of "person" in conjunction with the amendment proposed to the definition of control allows the Board to administer consistent concepts of control and saves the time and expense of potential acquirors, insured institutions and the Board's staff. The Board received no comments on the definition of the term "person".

K. "Savings and Loan Holding Company"

The definitional provisions of Part 574 include the same definition of "savings" and loan holding company" now found in 12 CFR 583.11 (1985). In the proposal, the Board amplified the terminology used in the statute to clarify that an exception for certain types of trusts that control an insured institution is available only to such trusts which controlled the insured institution on June 26, 1967. Such amendment is consistent with the congressional intent of the meaning of the exception, in the opinion of the Board's Office of General Counsel. *See* Ops. G.C. May 1, 1985; June 25, 1984. No comments were received on the definition of the term "savings and loan holding company", and the provision has been adopted as proposed.

L. "Stock" and "Voting Stock"

Voting stock plays a critical role in both Acts because acquisition or ownership of voting stock is the primary determinant of control. Both statutes include conclusive determinations that control exists upon the ownership or acquisition of more than 25 percent of an insured institution's voting shares or securities (or rights with respect thereto).[4] *See* 12 U.S.C. 1730(q)(8)(B);

[4] Although the Control Act restricts acquisitions of control through acquisitions of "voting stock", 12 U.S.C. 1730(q)(1) (1982), the control presumption in that statute references "voting securities." *Id.* at 1730(q)(8). The Holding Company Act refers to "voting shares". *Id.* at 1730a(a)(2).

1730a(2)(A) (1982). The term "voting stock", however, is not defined in either statute. While the Control Act offers a definition of "stock" as "such stock or other equity securities or equity interests in an insured institution which is a stock company, or rights, interests, or powers with respect thereto", 12 U.S.C. 1730(q) (13) (1982), the Holding Company Act is silent.

In the proposal, the Board incorporated the Control Act definition of "stock" into its regulations and further adopted a definition of the term "voting stock" similar to that of the Federal Reserve Board at 12 CFR 255.2(e)(1) (1984). In the Board's view, stock, partnership shares or similar interests are "voting stock" if they entitle the holder to vote for directors or persons with the equivalent managerial functions, or if in any other manner voting of the securities allows the holder to direct the operations or any significant policies of the issuer. The definition excludes, however, preferred stock if its voting rights are limited to those necessary to protect the investment and do not otherwise provide control. In this regard, the Board notes that preferred stock that would have voting rights upon the occurrence of specified events, *e.g.*, a default in payment of dividends, would not be deemed to be "voting stock" until the triggering event occurred, unless, of course, other characteristics of the stock would cause it to come within the "voting stock" definition. Finally, "voting stock" was used in place of "voting shares" to avoid confusion with share interests in a mutual institution.

The scope of the term "voting stock" is clarified with respect to options and rights to acquire stock and securities convertible into stock. It is noted that the phrase in the Control Act definition of stock by which "rights, interests, or powers with respect to" stock are deemed to be stock is broad enough to encompass virtually all options, warrants and convertible securities. In the Board's view, however, the definition should be tailored so as to include only those instruments in which the holder is subject to the preponderant economic risk with respect to the underlying voting stock. Thus, the definition of "voting stock" in the proposal and as adopted by the Board today includes securities that are convertible into "voting stock" or exercisable to acquire "voting stock" at the direction or option of the holder, where the preponderant economic risk of ownership of the underlying stock has shifted to the holder of the convertible security or right to acquire "voting stock."

In the case of securities immediately convertible into "voting stock" at the option of the holder, without payment of additional consideration, the Board regards the holder as possessing the preponderant economic risk with respect to the underlying "voting stock" and therefore such securities will be treated as the equivalent of the "voting stock" into which they are convertible. In this regard, a security would be treated as immediately convertible if its conversion were subject only to regulatory approval by the Board which would be required in any event. *See* FRB Staff Op. (May 14, 1984), 1 Fed. Res. Reg. Serv. section 4–397.2. In the case of other securities convertible into "voting stock" in different circumstances and of instruments representing rights to acquire "voting stock" such as options or warrants, the question of whether the holder possesses the preponderant economic risk in the underlying stock must be resolved on the basis of the particular facts of each case.

For example, a party may enter into an option agreement in which a substantial portion of the purchase price is paid prior to conversion or exercise. Arrangements also may provide an additional economic interest in the stock such as a provision that if the option goes unexercised, the optionee has the right to share in profits (or loss) upon sale of the security. Although record ownership has not passed, the arrangement gives the optionholder an economic interest in the stock equivalent to ownership and raises serious questions regarding actual control of the optioned stock. For such reasons, for example, an arrangement having such attributes was deemed the sale of a security to the optionee for purposes of section 16(b) of the Exchange Act, 15 U.S.C. 78p(b) (1982). *See Bershad* v. *McDonough*, 428 F. 2d 693 (7th Cir. 1970), *cert. denied*, 400 U.S. 992 (1971). The regulations adopted today provide, however, that the Board generally would consider the holder of a security convertible into "voting stock" or of rights to acquire "voting stock" *not* to possess the preponderant economic risk of ownership of the underlying stock where the holder has paid less than 50 percent of the consideration required to directly acquire the stock and has no other economic interest in the underlying stock. In other situations where the holder's economic stake in the underlying voting stock exceeds this level, or is less than 50 percent but is coupled with another interest in the underlying stock, the Board expects that specific questions as to whether a security constitutes "voting stock" will be resolved by consulting the Board's Office of General Counsel.

The Board believes that the foregoing treatment of convertible securities and rights to acquire "voting stock" reflects a realistic assessment of the actual control that may be exercised by parties owning or holding such securities or rights. In particular, the Board believes that the definition of "voting stock" is appropriate in view of the various non-traditional means for achieving control that have developed in the modern financial markets, in order to enable the Board to carry out its responsibilities to scrutinize acquisitions and changes of control of insured institutions *before* effective control has changed hands. The Board notes further that the definition of "voting stock" should not include a cutomary stock purchase agreement, and thus *bona fide* negotiated transactions should not be hampered by the application of the rule.

Finally, the definition of "voting stock" also includes securities that, upon transfer or any other event within the control of the holder, would become "voting stock", unless the securities also require that they can only be transferred in a widely dispersed sale or public offering. This provision of the definition is necessary to address arrangements in which an institution issues to a prospective acquiror a security which converts to "voting stock" upon transfer to a third party. Such securities have been used in stakeout agreements to give the prospective acquiror assurance that the target will not become the subject of another takeover. Since these arrangements give the prospective acquiror substantial control over a large block of stock, including the ability to transfer control to a third party, the Board is of the view that such a security is tantamount to acquisition of the stock itself. The Board notes that the Federal Reserve Board has taken a similar position with respect to such arrangements under the Bank Holding Company Act. *See Policy Statement on Nonvoting Equity Investments by Bank Holding Companies*, 12 CFR 225.143(c)(6) (1984).

With respect to the treatment of warrants and options, one commenter argued that all warrants and options to acquire "voting stock," except those for which no consideration at all has been paid, should be deemed to be "voting stock." The Board agrees that, where no consideration has been paid, convertible securities generally should not be deemed to be "voting stock." However, in the experience of the Board, when an

acquiror has paid less than 50 percent of the conversion price, the preponderant economic risk may not have been assumed and the interest in the underlying voting stock cannot be presumed to be equivalent to ownership. In this case the holder is not in a position of assuming the real economic risk of ownership as had it paid in excess of 50 percent of the exercise or conversion price. Further, because the holder must commit substantial financial resources in order to obtain the "voting stock," the Board believes that an institution's management may be less likely to be influenced by demands of the holder than if the underlying "voting stock" could be obtained without further substantial cost. Therefore, the Board has determined not to change the text of the provision in the final regulation as suggested by the commenter.

Another commenter requested that the phrase "no other economic interest" in the underlying voting stock be clarified in the context of providing the holder of securities with the preponderant economic risk. As noted above, it has been the Board's experience that an option holder may have an additional interest in the underlying "voting stock," such as the ability to share in any profit derived from the sale of the underlying "voting stock," or to direct the sale of the stock. In such a case, the Board could deem the option holder to own the "voting stock" based on his interest in the value of such stock. The existence of other economic interests will depend upon the facts and circumstances of each particular case, however, and therefore, the Board has concluded that it would not be feasible to further refine this aspect of the definition.

The Board also received an inquiry from one commenter concerning the proper calculation applied to convertible securities or rights to acquire "voting stock" which are deemed to be "voting stock" for purposes of determining whether control of an insured institution exists. In response, the Board has clarified the manner in which the calculation should be made. The final regulation details that for the purposes of calculating the percentage of voting stock held by a particular acquiror, stock or other securities convertible into "voting stock" or exercisable to acquire "voting stock" which are deemed "voting stock" are included in calculating *both* the amount of voting stock held by the particular acquiror and the total amount of stock outstanding, only to the extent of the voting stock obtainable by the *acquiror* by conversion or exercise of such stock or other securities.

Acquisitions of Control

A. Summary

Section 574.3 sets forth the prior-review requirements for an acquisition of control of an insured institution. The section is divided into two paragraphs which differentiate between acquisitions which are subject to either the Control Act or the Holding Company Act, a paragraph which describes transactions that are exempt from review, a paragraph describing transactions that are exempt from prior Board scrutiny but are subject to post-acquisition review, and a paragraph that describes transactions which are absolutely prohibited under the Holding Company Act.

B. Required Application or Notice

Paragraph (a) restates the acquisition restriction requiring prior Board approval of an application filed pursuant to the Holding Company Act which is now found in 12 CFR 584.4 (a) and (b). Pursuant to the Holding Company Act, any company, including a savings and loan holding company, is prohibited from acquiring control of an insured institution unless it has received the prior written approval of the Board. As is discussed below, a potential acquiror must follow the procedural requirements regarding holding company applications found in § 574.6. An application may be approved under this paragraph by the Principal Supervisory at the appropriate Federal Home Loan Bank if the application complies with the Board's standards for delegated authority found in § 574.8.

Paragraph (b) requires the submission of written notice by any person (or group of persons) seeking to acquire control of an insured institution. Such notice must include information required by the Control Act in the appropriate form provided by the Board. This paragraph replaces the prior-notice requirements of the Control Act regulation now found at 12 CFR 563.18–2(c). A determination of whether to disapprove a notice must be rendered within the 60 day review period as described in § 574.6 and may also be made by the Principal Supervisory Agent if the application or notice complies with the standards for delegated authority, found in § 574.8.

C. Transaction Exempt From Review

In paragraph (c) of § 574.3, the Board has described acquisition-of-control transactions which are entirely exempt from the Board's review process. The paragraph is divided into three components and incorporates exemptions that are provided by the Holding Company Act and in the Board's current regulations implementing the Control Act, with a third exemption for transactions in which information has been submitted to the Board or which have been approved under the current regulations.

Subparagraph § 574.3(c)(1) provides five exemptions for transactions involving acquisitions of insured institutions by "companies" which would otherwise be subject to the application and prior-approval process. The same exemptions are made available, where applicable, to acquisitions by "persons" pursuant to § 574.3(c)(2)(i). The first, enumerated as § 574.3(c)(1)(i), exempts transactions in which control is acquired under the terms of testamentary trusts exempt from the definition of savings and loan holding company. *See* 12 U.S.C. 1730a(a)(3)(B). This exemption merely obviates the need for such a trust to receive prior approval to control an insured institution because Congress has determined that such a trust need not be regulated as a savings and loan holding company. It is noted that an exemption is not provided for *inter vivos* trusts because the exemption in the Holding Company Act only extends to such trusts which already control an insured institution. *See* 12 U.S.C. 1730a(a)(3)(i) (1982); 12 CFR 574.2(k)(2)(i).

The second exemption concerns reorganizations which are exempted from the application process in the Holding Company Act at 12 U.S.C. 1730a(e)(1)(B)(ii). The exemption allows the acquisition of control of an insured institution by a newly formed company which is controlled by the same acquirors (which may be persons or companies) that have controlled the insured institution for the immediately preceding three years. The Board is aware that simple reorganizations which would not vest control of the institution in any new stockholders may fail to qualify for the exemption due to the widely-held nature of the institution's stock, and that such reorganizations ordinarily do not present major substantive issues for review. Accordingly, the Board already has directed its staff to devise a streamlined review procedure for these types of transactions, which the Board hopes to be able to consider in the near future. This second exemption also codifies the Board's long-standing interpretation that only simple reorganizations are exempt and if any other transaction occurs, such as an assumption of a previous owner's debt by the new holding company, the reorganization does not qualify for

exempt status. In order to take advantage of this exemption, acquirors are required to file a Form H-(e)4 demonstrating their qualification. The Board's General Counsel is delegated authority to consider the filing and is obliged to indicate any disapproval of the claim of qualification for the reorganization exemption within 30 days of receipt, or the reorganization would be deemed to be approved. Because of the specificity of this exemption, the Board finds that its policy statement on exempt reorganizations, at 12 CFR 589.2, is no longer necessary and is revoking it.

It should be noted that pursuant to the language of the Holding Company Act and past interpretations of this provision, the Board would regard this reorganization exemption as applicable only where the controlling person or persons have remained unchanged for the entire three-year period and group members have acted together to exercise control of the institution. *See,* e.g., Op. G.C. March 12, 1970. Further, the defined term "acquiror" is employed to clarify that companies may make use of the exemption. The Holding Company Act provides that the exemption is available for "persons" that have had the requisite control. The definition of "acquiror" in the final regulations is substantially identical the definition of "persons" in the Holding Company Act. *See* 12 U.S.C. 1730a(a)(1)(G). Thus, in the Board's view, the new regulation simply clarifies the types of transactions covered by the Holding Company Act.

The third exemption concerns the acquisition of control through the pledge or hypothecation of stock or the liquidation of a loan, in both cases where the transaction was contracted in good faith and in the ordinary course of business of the lender. The exemption extends for one year from the date that control was acquired, but may be extended further upon written approval of the Board. This exemption is derived from the exemption provided for in the Holding Company Act at 12 U.S.C. 1730a(e)(4). The Board notes that where a company qualifies for this exemption, such a company would, in fact, be a savings and loan holding company and as such subject, *inter alia,* to the registration requirement of the Holding Company Act at 12 U.S.C. 1730a(b), but would not be required to secure the Board's approval prior to exercising control (including taking possession) of the stock. The Board further notes that this exemption is intended to be limited to instances in which the secured lender needs to act quickly in order to protect its investment. It is also the Board's view that this exemption is unlikely to be available to "persons" rather than "companies" because of the requirement that the loan in question be in the ordinary course of business of the lender. In light of previous experience, the Board has concerns that fraudulent transactions may occur in which a person becomes a debtor with the intent of defaulting so that the lender may acquire control of an insured institution while avoiding prior approval under the Acts. Accordingly, the regulation requires that the Board be notified within 30 days of any transaction for which this exemption is claimed in order to monitor compliance and to ensure that the exemption is available only for loans contracted in good faith and in the ordinary course of business of the lender. In addition, it should be noted that this does not relieve an insured institution or insured bank from its obligation to report a loan secured by stock of an insured institution under § 574.5(b), discussed below.

The Board has clarified two other situations in which exemptions exist which are not expressly provided for in either the Holding Company Act or the Control Act. The first concerns control obtained through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, in cases where the proportional interests of the recipients remain substantially the same. As previously discussed, the stockholder would not be deemed to "acquire" the stock and therefore would not be subject to the prior-approval requirements. *See* 12 CFR 574.2(a).

The final rule also provides an exemption to clarify the fact that once control of an insured institution is approved, additional stock may be acquired without Board approval, if the acquisition is consistent with representations made by he acquiror in its application or notice and with any conditions imposed by the Board or its delegate in the initial approval. The Board wishes to take this opportunity to put prospective acquirors on notice that their applications or notices will be reviewed and their financial resources analyzed as if they were seeking to acquire 100 percent of an insured institution's voting stock, unless their application or notice specifically states otherwise. In the latter case, the application or notice will be analyzed with respect to such amount, but the Board or its delegate may limit its approval to the acquisition of such amount. Where the Board conditions its approval to acquire control on the purchase of a limited amount of stock, an applicant seeking to make additional acquisitions would be required to apply to have that condition modified based on a change of circumstances.

Section 574.3(i)(2) provides four exceptions for transactions which would otherwise require prior notification of the Board pursuant to the Control Act in accordance with § 574.3(b). First, the Control Act is specifically inapplicable to any transaction which is subject to the Holding Company Act. 12 U.S.C. 1730(q)(17). Accordingly, any transaction for which approval is required under paragraph (a) of § 574.3 (implementing the Holding Company Act acquisition application process) is exempted from the notice requirement of paragraph (b) of § 574.3. Second, any type of transaction which is excepted from review under the Holding Company Act is excepted from the Control Act notice requirement by § 574.3(c)(2)(ii). The third exception covers transactions for which other applications are filed where the Board will receive information comparable to what it would receive in a Control Act notice. This exception is limited, however, to exclude situations where the acquisition of control through the other transaction, *e.g.,* merger, would cause individuals who were not previously in control of an FSLIC-insured institution in accordance with the Control Act, to acquire control. For example, the exception would not apply if, as part of a merger transaction, an individual not currently in control of an insured institution would acquire control. In that case, a Control Act notice would need to be filed in addition to the merger application.

The exemptions also include the current regulatory exemption for acquisitions of additional stock of an insured institution either by a person (including persons acting in concert) who (1) has continuously held more than 25 percent of an institution's voting stock since the effective date of the Control Act, March 9, 1979, or (2) has maintained control of the insured institution continuously since acquiring control in compliance with the Control Act and regulations thereunder, provided the acquisition is consistent with any conditions imposed in connection with the previous approval and with any representations made by the acquiror in its notice. With respect to both exemptions, the Board wishes to note that where the 25 percent ownership or control exists by virtue of a group of persons acting in concert, the exemption is available only for the group as constituted on March 9, 1979, or at the time of acquisition of control in compliance with the Control Act as the case may be. In addition, an exemption

is provided with respect to persons that would have been deemed to control an insured institution on the basis of the proposed control presumptions prior to the effective date of this regulation. Proposed § 574.3(c)(2)(iv)(C) has been eliminated because its provisions are incorporated in other sections of the regulation.

With respect to all of the foregoing exemptions, acquirors also should be aware that the presence of an exemption for the approval process or an exemption from the requirement of prior approval under the Holding Company Act does not necessarily mean that the acquiror is exempt from other provisions of the Holding Company Act. As previously discussed, certain trusts are specifically excluded from the definition of a savings and loan holding company and thus would be entirely exempt under the Act. However, a company that acquires control of an insured institution in connection with a foreclosure that is exempt from the approval process, for example, is exempted only from sections 408(c)(2) and 408(g) of the Holding Company Act, 12 U.S.C. 1730 (c)(2) and (g) (1982). Other types of exempt acquisitions of control, such as an exempt reorganization, also leave the acquiring company fully subject to all other provisions of the Holding Company Act.

The Board is aware that acquisitions are in progress during the course of this rulemaking procedure, and that applications or notices have been filed with the Board without a determination being rendered by the Board upon this regulation becoming effective. The Board has, therefore, determined that all applications and notices which were filed and are materially complete on the effective date of this regulation will be subject to the current regulations under the Control Act and the Holding Company Act.

The Board received several comments concerning the extent to which the rule would apply to acquirors whose status as of the effective date of the rule is within the scope of a control determination yet who were not deemed to be in control of an insured institution under the Board's current rules. One commenter urged the Board to require all companies that would be deemed to control an insured institution based on the new regulations be given a brief grace period either to file for approval of their control relationship or divest their holdings. The Board does not believe that such a result would be equitable or feasible. Such a result could require an acquiror to file for regulatory approval based upon actions taken—potentially years ago. Further, as previously discussed, both the Control Act and the Holding Company Act generally envision filings *prior* to an acquisition of control of an insured institution. However, the Board will require a notice, application or rebuttal agreement, as appropriate, to be filed and approved prior to such an acquiror acquiring *any additional voting stock or obtaining any additional control factor* after the effective date of the rule.

D. Transactions Exempt From Prior Approval or Notice

Section 574.3(d) specifies exemptions from the requirements of prior approval or prior notice under the Holding Company and Control Acts, respectively. These limited exemptions are provided to accommodate situations where persons or companies may not be capable of controlling the timing of the transaction which results in the control relationship. Similar exemptions, for stock acquired through a *bona fide* gift, testate or intestate succession, or in satisfaction of a debt contracted in good faith, currently appear as exemptions from prior notice under the Control Act regulations at 12 CFR 563.18–2(d)(2) (i) and (ii) (1985). Control that is obtained through a percentage increase in ownership following a stock split or redemption that was not *pro rata* or essentially *pro rata* in nature also may be exempt from a prior-filing requirement and also are subject to an after-the-fact filing, as are all the transactions in this category. Transactions included in this exemption also may arise where a person or company acquires voting rights with respect to previously non-voting stock, *e.g.*, upon default or payment of dividends on preferred stock, or gains a control factor, *e.g.*, becomes one of the two largest shareholders of an institution, such as if the largest shareholder sells its stock to several purchasers, as a result of actions of third parties not within the acquiror's control. In the event an investor thereby would be determined to be in control, either conclusively, or subject to rebuttal, the prior-filing exemption would be available.

These exemptions, however, are subject to certain conditions in order to safeguard against abuses. First, an acquiror obtaining stock or a control factor under circumstances covered by an exemption from prior approval or prior notice must file an application, notice or rebuttal with the Corporation as soon as practicable and at least within 90 days of acquisition of the stock or control factor. A rebuttal, application or notice submitted under these circumstances would *not* be treated as an after-the-fact rebuttal, application or notice, as the case may be, submitted by a party in control of an insured institution in violation of the Board's rules, which would constitute a "presumptive disqualifier" under the rule. Second, during the pendency of the Corporation's review, the acquiror may not take any actions designed to influence the management or policies or effect a change in control of the insured institution in question, and the Corporation may require the acquiror to take steps such as putting excess stock in trust or agreeing to *pro rata* voting arrangements to ensure that control is not exercised. Third, if the Board disapproves the acquiror's application or notice, the acquiror will be required to divest stock or otherwise assume a noncontrol status within one year of the Board's action, or such shorter period as the Board may order in rendering its decision. It is noted that control acquired through testate or intestate succession is subject to less cumbersome procedures. The Board believes that these procedures are adequate to monitor changes in ownership that may occur through testate or intestate succession.

The Board notes that these exemptions are predicated upon the assumption that acquirors may gain control of an insured institution through a transaction over which they have no control. The regulations require that an appropriate application, notice or rebuttal would be filed prior to the acquisition if the acquiror were capable of controlling the timing of the stock transaction, or other event that caused the acquiror to be deemed to be in control.

E. Prohibited Acquisitions

Paragraph (e) sets forth the Holding Company Act's prohibitions on acquisitions that would result in the formation of certain interstate holding companies. See 12 U.S.C. 1730a(e)(3) (1982). Such acquisitions may be approved, however, in accordance with the emergency thrift-acquisition provisions of 12 U.S.C. 1730a(m) (1982). In addition, the Board may arrange interstate supervisory mergers involving federally-chartered subsidiaries of holding companies pursuant to its branching policy statement for federal associations. 12 CFR 556.5(a)(3) (1985). See *Independent Bankers Association of America* v. *Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C. 1982). In addition, paragraph (e)(1) also has been amended to codify recent interpretations of the scope of the "multi-state multiple"

provisions of the Holding Company Act issued by the Office of General Counsel.

Determinations of Control

A. Summary

The most extensive amendments to the current regulations contained in the proposal concerned the clarification of the definition of "control" of an insured institution. As already noted, both the Control Act and the Holding Company Act employ broad definitions of the term "control". The Control Act describes control as the power, directly or indirectly, to direct the management or policies of an insured institution. 12 U.S.C. 1730(q)(8)(B) (1982). The Holding Company Act provides that the term includes control in any manner of the election of the majority of the directors of an insured institution. *Id.* at 1730a(a)(2)(A). Control also may be found under the Holding Company Act if the Corporation determines that a person, directly or indirectly, exercises a controlling influence over the management or policies of an insured institution. *Id.* at 1730a(2)(D). Under either statute, the acquisition of more than 25 percent of an insured institution's voting stock is conclusively deemed the acquisition of control. 12 U.S.C. 1730(q)(8)(B); 1730a(a)(2)(A) (1982). While the current Holding Company Act regulations simply restate the statutory indicia of control, 12 CFR 583.26 (1985), the Control Act regulations, like those of the other federal financial institutions regulatory agencies, set forth an additional presumption of control at 12 CFR 563.18-2(c)(2) (1985). This presumption arises when a person acquires the power to vote more than 10 percent of any class of voting securities of an insured institution that has a class voting securities registered under section 12 of the Exchange Act, 15 U.S.C. 78l (1982), and such stock is "actively traded."[5]

With the increase in acquisition activity in recent years, the Board and its staff have regularly been confronted with a variety of investments in securities of insured institutions which raise control concerns under the statutes but which may not be precisely covered by the control criteria set forth in the current regulations. To deal with these situations, the Board has resorted to the generalized formulations of control in the statutes to compel compliance. The variety of the Board's experience in administering the Control Act and Holding Company Act has allowed it to identify certain factors that raise questions as to whether the investor has the power to control the association or is in fact exerting a controlling influence on the institution. To facilitate compliance with the Acts, and to expedite resolution of these issues, the regulations incorporate these factors as part of a more comprehensive and realistic series of control determinations. When such factors are present at the same time an investor has a certain level of securities ownership, the investor would be determined, subject to rebuttal, to have acquired control. This revised system should not only serve the Board's goal of increased compliance but should also benefit acquirors and investors by giving them advance notice of how the Board will examine their investments.

Control determinations under both Acts are set forth in § 574.4. The section is divided into control determinations specifically mandated by the Acts and control determinations based upon circumstances which, in the Board's experience, constitute situations in which an acquiror typically would be capable of actual control by directing the management and policies of an insured institution. The control determinations which are mandated by the Acts are termed "conclusive control determinations" and are set forth in § 574.4(a). The control determinations which would otherwise provide an investor with actual control are enumerated in § 574.4(b) and termed "rebuttable control determinations."

Both conclusive and rebuttable determinations of control may occur on the basis of one or more transactions. Thus, the proper filing must be made prior to the commencement of a multistep transaction which would ultimately vest the acquiror with control of an insured institution.

B. Conslusive Control Determinations

Section 574.4(a) sets forth as conclusive control determinations the statutorily specified criteria of the term "control." Paragraph (a) follows the statutory criteria and establishes a conclusive determination of control when an acquiror, directly or indirectly, or acting in concert with others, acquires more than 25 percent of a class of voting stock of an insured institution. The provision integrates the control determinations of the two statutes. Although the Holding Company Act speaks of a person who "owns, controls, or holds with power to vote, or holds proxies representing" stock while the Control Act refers to a person who "acquires" the stock, the two statutory provisions have been interpreted in a manner that covers essentially the same transactions. As a rule, an acquisition of stock results in control of that stock. The implementing regulations also specify that control is achieved upon the acquisition of more than 25 percent of a *class* of voting stock, which is the language used in the Control Act. The Holding Company Act provides that control is present upon ownership or control of more than 25 percent of an institution's voting "shares" rather than a class of voting stock. In most cases, the change will not make a difference because insured institutions generally only have one class of voting securities. The Board has noted, however, that there are institutions that have begun using different classes of common stock to limit or structure control of the institution, a situation not present when the Holding Company Act was drafted. In the Board's view, the acquisition of 25 percent of such a class would raise Holding Company Act concerns and should be subject to its requirements in order to prevent evasions of the Act.

Paragraph (a) also lists other conclusive control determinations, including, with respect to both an insured institution and a company, holding irrevocable proxies representing more then 25 percent of any class of voting stock of the institution or company; any combination of shares of a class of voting stock and irrevocable proxies with respect to such stock representing more than 25 percent of the class; control in any manner of the election of a majority of the institution's or company's directors; and, with respect to determining control of a company only, control of the election of a majority of the company's trustees, a position as general partner, contribution

[5] As originally promulgated, the Board's Control Act regulations established two control presumptions deeming a person to acquire control if he or she acquired more than 10 percent of an insured institution's stock and either: (1) The institution had a class of stock registered under the Exchange Act; or (2) the acquiror was the institution's largest shareholder following the acquisition. *Amendments Relating to Change in Savings and Loan Control Act*, Board Resolution No. 79-121, 44 FR 10500 (Feb. 21, 1979). These presumptions were the same ones that are currently found in the regulations of the other federal financial institutions regulatory agencies. *See* 12 CFR 5.50(e); 225.41(b)(2); 303.15(a) (1984). Subsequently, the control presumption with respect to institutions with a registered class of voting securities was limited to institutions that had more than 1200 shareholders and $250 million in assets. *See Federal Savings and Loan Institutions, Change in Control*, Board Resolution No. 80-491, 45 FR 55693 (Aug. 21, 1980). Finally, in 1982, the presumption regarding largest shareholders was eliminated and the presumption with respect to institutions with a registered class of voting securities was revised to require active trading in the stock, rather than 1200 shareholders and $250 million in assets. *Amendments Relating to Change in Control*, Board Resolution No. 82-507, 47 FR 34120 (Aug. 6, 1982).

of more than 25 percent of capital, or a position as trustee with respect to control of a trust.

Finally, paragraph (a) states general definitions of actual control for both statutes. Although the wording of the Control Act control definition, 12 U.S.C. 1730(q)(8)(B) (1982), differs slightly from that contained in the Holding Company Act at 12 U.S.C. 1730a(2)(D) (1982), the Board believes that the differences in formulation are not of substance and that both statutes were designed to address the same general type of controlling influence over the affairs of an insured institution. In the Board's view, it is appropriate that control determinations under both the Control Act and the Holding Company Act be made in advance of actual exercise of controlling influence. Prior review is fundamental to the purposes and structure of both Acts. Advance determinations are necessary in order to avoid consummation of transactions that would frustrate the purpose of the Acts and to save acquirors from substantial expenditures that ultimately may be deemed unlawful under the Holding Company Act's "controlling influence" standard. The Board notes that the Federal Reserve Board has adopted a similar position under the Bank Holding Company Act in its revisions of Regulation Y. *See* 12 CFR 225.2(d)(1)(iii) (1984).

Bank Holding Companies and Change in Bank Control; Revision of Regulation Y, Docket No. R-0470, 49 FR 794, 799 (Jan. 5, 1984).

C. Rebuttable Control Determinations

In addition to setting forth the criteria for actual control as stated in the Acts, the Board has supplied rebuttable control determinations which describe specific circumstances that, in the Board's experience, typically enable an investor to direct the management or policies of an insured institution. The rebuttable determinations of control reflect the experience of the Board and its staff in reviewing investments in insured institutions and are intended to put acquirors on notice of the Board's position regarding control under both statutes and to expedite the process of resolving questions of control.

The Board wishes to point out that these rebuttable control determinations do not operate as presumptions, as under the current Control Act regulations. Rather, they present determinations of control which are subject to rebuttal pursuant to specified requirements and procedures. If such procedures are not followed (or specifically waived by the Board), the control determination is not rebutted and the acquiror in question would be deemed to be in control.

In the context of the Holding Company Act, the rebuttable determinations of control are based on the "controlling influence" criterion which requires that the Board provide reasonable notice and an opportunity for a hearing on such a determination, 12 U.S.C. 1730a(a)(2)(D) (1982), and have been derived from the Board's experience with situations where a company may exert actual control over an insured institution, as well as an examination of control concepts applied in the context of other statutes. The rule provides that a prospective acquiring company whose planned acquisition would come within the scope of one or more of the rebuttable determinations of control must either seek to rebut the determination of control or file the appropriate application before proceeding with the acquisition. If the company proceeded with a rebuttal, it would make a rebuttal submission in the manner described in the rule. In order to avoid delays in considering rebuttals, authority to consider rebuttals continues to be delegated jointly to the Board's Office of Examinations and Supervision and Office of General Counsel and will be considered under criteria, procedures and deadlines that are also part of the rule and are discussed below. If the rebuttal submission did not meet the rebuttal criteria, the acquiror would be notified that its rebuttal was not accepted. If the acquiror were a company and the company were then to proceed with the acquisition, rather than file the appropriate application, the facts presented in the acquiror's rebuttal effort could be the basis upon which a notice, with opportunity for hearing, could issue. The Board wishes to emphasize that where acquirors subject to the Holding Company Act chose to proceed with an acquisition without filing and receiving approval of an application, the Board has the firm intention to pursue such actions through additional administrative procedures.

The Control Act does not present the procedural complexity in the use of rebuttable determinations that is presented by the "controlling influence" standard of the Holding Company Act. The Control Act defines "control" as the power, directly or indirectly, to direct the management or policies of an insured institution *or* to vote 25 percent or more of any class of voting securities of the insured institution. 12 U.S.C. 1730(q)(8)(B) (1982). The rebuttable determinations of control as applied in the Control Act context again are based upon the Board's experience in observing actual contol situations, as well as other statutory control standards, and implement the first part of the foregoing definition. Application of the rebuttable determinations as a basis for a finding of control under the Control Act does *not* require a prior hearing before a violation of the acquisition restrictions may be found. The rebuttal process would be available under the Control Act, and again the rule provides that a prospective acquiring persons whose acquisition would be within the scope of one of the rebuttable determinations of control would either seek to rebut the determination or file the requisite notice and obtain clearance before proceeding with the acquisition.

In its proposal, the Board had set forth a rather complex scheme of rebuttable control determinations based on four components: (1) Whether the target institution's stock was actively traded, (2) whether the stock to be acquired was voting stock, (3) the amount of stock to be acquired, and (4) certain "control factors" which were divided into primary and secondary categories. The Board received numerous comments concerning the extent of the rebuttable determinations. Upon review of these comments, the Board has determined that the rule would be more effective if this system of rebuttable control determinations were simplified. Accordingly, in the final regulation, the Board has reduced the potential combinations of factors through which control may be determined and retained only the most meaningful components from the proposal.

The Board has eliminated the proposed distinction based on whether the stock to be acquired is "actively traded." While the widespread ownership of actively-traded stock might more readily facilitate the realization of control of an insured institution than an institution whose stock ownership is more concentrated, the Board has concluded that the stock ownership thresholds are at a level that should furnish a stockholder of any institution, when coupled with control factors, with the power to direct management or policies of the institution. Further, because these control determinations are rebuttable, the distribution of the institution's stock will remain an element in the determination of control which may be raised in the rebuttal process.

In the final regulation, rebuttable control determinations arising from stock ownership are divided into only two categories which involve voting stock and non-voting stock. With regard to the ownership of voting stock, the

final regulation in § 574.4(b)(1)(i) states that an acquiror will be deemed to control an insured institution, upon acquiring more than 10 percent of any class of *voting* stock of an insured institution, if the acquiror is also subject to any control factor. This determination may well be less sweeping than the presumption contained in the current Control Act regulation, which presumes control based upon the acquisition of more than 10 percent of an actively traded institution's voting stock, irrespective of the existence of control factors. Notwithstanding this fact, the Board received a comment that the rebuttable determination of control based on the ownership of 10 percent or more of voting stock is an unauthorized expansion of the concept of control and inconsistent with the intent of the Control Act. In light of the purpose and language of both Acts, the current Control Act regulation, and the regulations of other federal financial regulatory agencies under the Change of Bank Control Act, the Board believes that this comment is not well founded. As discussed at length herein and in the preamble to the proposal, the rebuttable determination based in part on 10 percent ownership represents a situation in which a stockholder generally is capable of directing the management or policies of an institution. Congress directed the Board to make such determination by including such a subjective standard in both the Control Act and the Holding Company Act.

Nevertheless, the Board has carefully considered the concern expressed by the commenter. In so doing, the Board has reviewed not only its experience with its current rule, but also a variety of other settings in which other agencies administer statutes in which control concepts are applied. For example, the Board, historically, has equated the "power to direct" with power to vote 10 percent of a class of stock. Prior to the enactment of the Control Act, the Board required after-the-fact reporting of changes in control. Control was defined as "the power to directly or indirectly direct * * * and includes but is not limited to any change in the direct or indirect ownership of more than 10% of the voting stock of an insured institution." 32 FR 11044 (July 28, 1967). In addition, since 1976, the Board has required prior approval and reporting of acquisitions of more than 10% of the voting shares of institutions that have recently converted from mutual to stock ownership. 41 FR 50414–15 (Nov. 16, 1976). On this basis, the Board believes that the levels of stockholdings it has selected for rebuttable control determinations, coupled with the revised control factors, are well within the parameters of situations where the Board and other bodies have found control to be present. The Board also concluded that the use of rebuttable control determinations in this fashion was crucial to its ability effectively to implement the *prior* review process which is at the heart of the purposes of both Acts.

The Board further notes that the second threshold for a rebuttable determination, which arises from the acquisition of non-voting stock, provides that an acquiror will be deemed to control an insured institution upon acquiring more than 25 percent of *any* class of stock of the insured institution, if the acquiror is also subject to any control factor. Again, the Board believes this threshold, combined by the revised control factors discussed hereinafter, is fully supported by its experience and is consistent with control concepts applied by other federal banking and regulatory agencies.

The Board received a comment concerning the interaction of the acquisition of stock of an insured institution and the existence of control factors regarding the timing of the existence of a rebuttable determination of control. Clearly, when an acquiror obtains a control factor prior to or simultaneously with the acquisition of stock which when combined would give rise to a rebuttable determination of control, the acquiror would be deemed to have gained control upon the purchase of the stock. However, the Board believes that a person or a company must also be deemed to have gained control of an insured institution when it holds an amount of stock in excess of a threshold amount and then subsequently obtains a control factor, irrespective of whether additional stock is then acquired. In the proposal, the Board specifically requested comment on the question of how much time should elapse between the acquisition of stock and the commencement of the existence of a control factor before an acquiror would no longer be deemed to have acquired control. One commenter opposed any device which would allow an acquiror to hold stock for a specified amount of time and thereafter obtain a control factor which would cause it to fall within a rebuttable determination of control, yet avoid notice or application procedures merely due to the passage of time. The Board agrees with this conclusion and, therefore, the rule relates the acquisition of a control factor back to the acquisition of stock so that a person or company will be regarded as having gained control of an insured institution upon obtaining a control factor irrespective of the passage of time since acquiring the requisite amount of stock.

In addition to rebuttable control determinations based on the ownership of stock, the proposed revisions contained rebuttable determinations based on holding revocable proxies. In the Board's experience, in certain situations a holder of revocable proxies may effectively cause a change of control of an insured institution or otherwise be capable of exerting a continuing controlling influence on the management and policies of an insured institution, and therefore, in those situations, the Board should have the opportunity to review the prospective change in control before it occurs, just as in the case of a change in control occurring through an acquisition of stock. Indeed, in a recent article, a noted commentator described a proxy contest as "an expeditious method of acquiring control." Lipton and Browstein, "Takeover Responses and Directors' Responsibilities—An Update, 40 *Bus. Law.* 1403 (Aug. 1985).

The Board notes that the literal language of both the Holding Company Act and the Control Act covers the holding of proxies representing 25 percent or more of an insured institution's voting stock, regardless of the purpose of the proxy. See 12 U.S.C. 1730(a)(2) (A) and (B), 12 U.S.C. 1730(q),(1),(8)(B) and (13). Rather than apply the statutes in so broad a manner, however, the Board has elected to treat the holding of revocable proxies representing 25 percent or more of a class of voting stock as giving rise to a rebuttable determination of control, and only so when the proxies relate to specified matters that are indicative of the proxy holder's ability to acquire and exercise effective control on a continuing basis. In so doing, the Board has sought not to unduly interfere in the corporate governance procedures of insured institutions, while at the same time protecting the Board's interest in scrutinizing changes on control before, rather than after, they occur.

In its proposal, the Board included among the rebuttable determinations of control, the possession of revocable proxies representing 25 percent or more of any class of voting stock of an insured institution where such proxies (1) pertain to the election of a majority of the insured institution's board of directors; (2) pertain to the acquisition or corporate reorganization of the insured institution; or (3) would enable the proxy holder to exert a continuing

influence on a material aspect of the business operations of the insured institution. The Board requested comments on other factors that would be appropriate for this control element and other ways in which control through proxies could be addressed in the final regulation.

The Board received several comments regarding its determinations of control based on the holding of proxies. One commenter raised the concern that the proposal would discourage proxy solicitations altogether because it would be impossible to receive Board approval of a holding company application in the time frame of a proxy contest. The Board notes that only certain specified issues arising in a proxy contest would give rise to a rebuttable control determination. Where proxies will be held in connection with a matter that is within the scope of the rebuttable determination, it is the Board's intention to make use of the expedited rebuttal process in order to speedily resolve whether an application or notice would be required. Finally, if an application or notice would be required due to the subject of the proxy solicitation and the lack of availability of a rebuttal, the Board believes that by specifying the circumstances when an application or notice would be likely to be required, prospective acquirors will be on notice and thereby have sufficient time to plan their conduct accordingly.

The Board also received several comments concerning the applicability of the control determinations to proxies solicited by management of the insured institution. The Board has clarified its position in this area by providing in the final regulation that revocable proxies solicited by or on behalf of management do not raise rebuttable control determinations as management is presumed to be exercising its fiduciary duty on behalf of the institution rather than acting in its own interest. Further, as management is currently, in one respect, in control of the institution, it generally is not subject to the Acts which regulate *changes* in control. In addition, the Board has clarified its previously stated position by indicating that the solicitation of proxies in opposition to a solicitation by management will not come within the scope of the rebuttable control determination. It is the Board's belief that shareholder democracy should not be unduly restricted and, indeed, that to do so may not be in the best interests of an institution, and that a solicitation in opposition to a management solicitation need not be an attempt to achieve effective control of the institution. It is noted, however, that a solicitation concerning election of directors which is in opposition to a management solicitation is not totally excepted and may give rise to a rebuttable control determintion where it would enable an acquiror to hold one-third or more of the seats on the board.

Another commenter requested that the Board clarify the inclusion of voting stock and irrevocable proxies together with revocable proxies in this control category. The Board finds this request to be well founded, and the final regulation expressly includes voting stock and irrevocable proxies in the calculation, together with the amount of revocable proxies held. In a similar fashion, the final regulation clarifies the fact that the nominees or representatives of the acquiror who currently serve on the institution's board of directors must be included when considering the number of representatives of an acquiror on a board of directors.

Of the three issues to which revocable proxies must pertain in order to raise a control determination, the Board received comment primarily with regard to the factor pertaining to the election of directors. In the proposed revisions, the Board would have created a rebuttable control determination for any acquiror holding 25 percent of the revocable proxies which pertained to an election of a majority of the insured institution's board of directors. One commenter suggested that if an acquiror could elect a majority of the institution's board of directors, the acquiror would be subject to the conclusive determination of control at § 574.4 (a)(i)(iii). The Board notes that the proposal did not concern the ability of the proxy holder to elect a majority of the directors but rather the holding of proxies pertaining to that issue. Upon further consideration, however, the Board has determined that an acquiror will be deemed in control, subject to rebuttal, where voting stock and proxies would enable the acquiror to elect one-third or more of the institution's board of directors. It has been the Board's experience that an acquiror who can elect representatives constituting at least one-third of the board of directors generally is capable of exerting substantial direction over the management and policies of an institution. This would be particularly likely, for example, in the case of a staggered board where election of one-third of the board generally would cover all the candidates for election in that year. The Board also notes that this determination is subject to the rebuttal process. The final regulation also includes proxy holders who could cause the insured institution's stockholders to approve an acquisition or corporate reorganization of the insured institution, or enable the acquiror to exert a continuing influence on a material aspect of the business operations of the insured institution, as was set forth in the proposal.

D. Control Factors

As previously discussed, the proposal sought to define the power to direct the management or policies of an institution through the combination of an acquiror's ownership of stock and certain control factors. In the proposal the Board listed seven primary control factors and seven secondary control factors which described various relationships between an acquiror and an insured institution. The Board received several comments concerning the relative merits of each proposed control factor, and one comment concerning the concept of basing control on stock ownership coupled with control factors. This commenter favored the regulatory scheme and agreed with most of the Board's proposed control factors, but suggested that the distinction between primary and secondary control factors was complex and somewhat arbitrary. Upon further consideration, in connection with its reduction in the number of categories of rebuttable control, the Board has determined that it is no longer necessary to provide separate categories of control factors. Thus, in the final regulation, the Board has listed one set of control factors at § 574.4(c). These eight control factors are comprised of all of the primary control factors and one secondary factor from the proposal. Some control factors also have been modified from the proposed revisions in response to concerns raised by commenters, or to incorporate features of eliminated control factors.

In the final regulation, the control factors include situations in which: (1) The acquiror would be one of the two largest holders of any class of voting stock of the insured institution; (2) the acquiror would hold more than 25 percent of the total stockholders' equity of the insured institution; (3) the acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the insured institution; (4) the acquiror is party to any agreement (A) pursuant to which the acquiror possesses a material economic stake in the insured institution resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the insured

institution; or (B) which enables the acquiror to influence a material aspect of the management or policies of the insured institution, other than agreements to which the insured institution is a party, and where the restrictions are customary under the circumstances, and in the case of an acquisition agreement, the restrictions apply only during the period when the acquiror is seeking Corporation approval to acquire the insured institution, the agreement prohibits transactions between the acquiror and the insured institution and their respective affiliates without Supervisory Agent approval during the pendency of the application process, and the agreement contains no material forfeiture provisions applicable to the insured institution in the event the acquisition is not approved or not approved by a specified date; (5) the acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the insured institution's voting stock or to vote more than 25 percent of a class of an insured institution's voting stock in the future upon the occurrence of a future event; (6) the acquiror would have the power to direct the disposition of more than 25 percent of a class of the insured institution's voting stock in a manner other than a widely dispersed or public offering; (7) the acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the insured institution's board of directors; or (8) the acquiror or a nominee or management official of the acquiror would serve as the chairman of the board of directors, chief executive officer, chief operating officer, chief financial officer or in any position with similar policy-making authority of the insured institution.

It has been the Board's experience that the presence of any of the above factors coupled with ownership of a substantial block of stock is strongly indicative that the acquiror has the power to exert control over an institution's management or policies. For example, the Board's first proposed control factor, status as the largest shareholder, constitutes a control presumption for a 10 percent owner under the Change in Bank Control regulations of the Federal banking agencies. See 12 CFR 5.50(e); 225.4(b)(2); 303.15(a) (1984). In the final regulation, the Board also has added the proposed secondary control factor pertaining to the two largest shareholders as a control factor. The Board believes that the second largest stockholder of an institution may well possess as much power as the largest stockholder, particularly if there is no substantial difference in their stockholdings or if the largest stockholder is essentially a passive investor. However, because this is a component of a rebuttable control determination, the Board expects, in a case where the largest shareholder is firmly in control of the institution to the exclusion of an investor who would be the second largest shareholder, that a rebuttal could be filed and considered. The board received no comment on this control factor.

The Board also regards substantial non-voting equity investments as an indication of control. When an investor supplies an institution with a substantial portion of its equity capital or otherwise provides it with substantial funds, it is difficult to avoid the conclusion that the institution will be greatly influenced by the investor. With very sizeable investments, such influence need not depend on express contractual arrangements or legal rights. Further, control is not limited to day-to-day management of an institution, but applies also to investors who are generally consulted regarding major decisions. Similar concerns have prompted the Federal Reserve Board to adopt a guideline of 25 percent of non-voting equity investments in banks with respect to control issues under the Bank Holding Company Act. *See Policy Statement on Non-Voting Equity Investments by Bank Holding Companies,* 12 CFR 225.143(d)(5) (1984). As evidenced by the second control factor, the Board considers ownership of 25 percent of stockholders' equity a reasonable threshold for total equity investments in insured institutions in light of the 25-percent control criterion employed with respect to companies under the Holding Company Act. *See* 12 U.S.C. 1730a(a)(2)(B).

Similarly, the third control factor, a 35 percent investment in the combined debt securities and stockholders' equity in an institution, would raise such assumptions of control. In the Board's experience, a substantial creditor is generally in a position to exert substantial continuing control over an institution. Related to this point, one commenter suggested that the calculation of 25 percent of stockholders' equity should include instruments which constitute net worth under the Board's regulatory accounting principles. Such a proposition would bring subordinated debentures within the 25 percent calculation of the second control factor. The Board has elected not to treat subordinated debt and other regulatory net-worth items as stockholders' equity under this test. However, the third control factor of 35 percent of the combined debt securities and stockholders' equity of an institution would include subordinated debentures.

The fourth control factor reflects the Board's concern with the various arrangements including standstill-type agreements used by potential acquirors in stake-out or other acquisition arrangements. In the usual case, an acquiror will make a substantial non-voting equity investment in a target institution and enter into an agreement designed to ensure that the target does not engage in activities inimical to the investor's interests. Often these agreements take the form of covenants by the target not to enter into new lines of business or otherwise vary its operations from present patterns. Other agreements are more interventionist, requiring consultation with the acquiror on policy questions or enabling the acquiror to direct the voting of certain shares. Many of these agreements supply the acquiror with substantial potential to contol, if not actual control over, the affairs of the institution. This is clearly the case when an arrangement requires consultation and clearance on major business matters, but control can also arise from agreements requiring adherence to current business practices. The surrender of new business opportunities at the behest of the acquiror at least raises questions of control.

On the basis of these concerns, the Board proposed a control factor covering any agreement which enables an acquiror to influence the management or policies of an insured institution, other than certain specified agreements. The Board received a comment which suggested that agreements which "enable the acquiror to influence the management or policies of the insured institution" as stated in the proposal would fall within the conclusive control determination concerning actual control set forth at § 574.4(a)(3). In response to this comment, the Board has amended the description of an agreement constituting a control factor by clarifying the fact that only agreements covering a limited yet material aspect of the institution's business give rise to a rebuttable control factor. Included in the description of these agreements are incidents of material economic relations, such as profit sharing, use of common names, facilities or personnel or the provision of essential services. These criteria were secondary control factors in the

proposed revisions although they were not necessarily required to arise in specific agreements between an acquiror and a target institution. Accordingly, the final regulation states that a control factor exists if: The acquiror is party to any agreement (1) pursuant to which the acquiror possesses a material economic stake in the insured institution resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the insured institution; or (2) which enables the acquiror to influence a material aspect of the management or policies of the insured institution, other than specified agreements, including acquisition agreements that meet certain criteria, which are exempted.

The Board recognizes in this regard that restrictive covenants may serve legitimate ends in merger or credit agreements or in investments that infuse additional capital into an institution, and does not wish to unduly restrict these uses. The regulations therefore provide that agreements imposing covenants, restrictions or requirements affecting the management, policies or operations of the institution would not constitute a control factor if (1) the institution is a party of the agreement, (2) the restrictions are customary under the circumstances, and (3) in the case of an acquisition agreement, (i) the restrictions apply only during the period when the acquiror is seeking regulatory approval for the acquisition, (ii) the agreement prohibits transactions between the parties or between a party or its affiliates and affiliates of the other party without the approval of the Supervisory Agent, and (iii) the agreement prohibits material forefeiture payments by the insured institution in the event of default if approval of the acquisition is not obtained or is not obtained by a specified date.

The fifth and sixth control factors concern the ability of an acquiror to vote more than 25 percent of a class of an insured institution's stock upon the occurrence of a future event and the power to direct the disposition of more than 25 percent of a class of voting stock, respectively. These factors further reflect the Board's concern with agreements used by potential acquirors in stake-out arrangements. Such arrangements clearly signal management that the acquiror has the ability to effect substantial changes in the operations of the insured institution. No comments were received concerning the ability to dispose of stock. One commenter did express the concern that a financing agreement which provided the lender with the right to vote the stock held as collateral upon default might be considered to provide the lender with the ability to vote stock upon the occurrence of a future event. The Board takes this opportunity to clarify its intent that default of a loan would not be a "future event" for purposes of the fifth control factor and notes further that the hypothecation of stock or its voting rights is entirely exempt from the approval process if the loan was contracted in good faith, in the ordinary course of business of the lender, as described more fully above. *See* § 574.3 (c)(i)(iii); (d)(i)(ii).

The seventh control factor concerns the acquiror's representation on the target institution's board of directors. In the proposal, where 25 percent or more of an institution's board of directors was comprised of representatives or nominees of the acquiror, a primary control factor would have existed. Any representation at all would have constituted a secondary control factor. Several commenters argued that a minority position on the board of directors would not of itself constitute control. While the Board does not necessarily disagree, it notes that rebuttable control determinations require an aggregation of a substantial block of stock with control factors and provide for use of the rebuttal process if actual control does not exist. Nonetheless, in response to points raised by commenters the Board determined to reformulate this control factor.

The issue of representation on the board of directors was considered in conjunction with the reconsideration of the agreement required of investors attempting to rebut a rebuttable determination of control. The Board has determined that an inventor may reasonably desire a seat on the board of directors in order to monitor its investment, without seeking, or being able to exert control. The Board is not persuaded, however, of the need to have more than one director representing an investor other than where that acquiror wishes to attempt to influence the management or policies of the insured institution. Accordingly, a control factor will exist when the acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the insured institution's board of directors.

The eighth and final control factor set forth in the regulation concerns interlocking management between the acquiror or a company owned by the acquiror and the target institution. In the proposed revisions, the interlock factor was set forth as a secondary factor and included any management official of the acquiror or the institution. The Board received no comments on this proposed factor and has determined to retain the interlocking relationship as a control factor but to limit the officials of the insured institution who would be deemed to trigger the factor. A control factor now will be triggered only if the acquiror or a nominee or management official serves in the following positions with the institution: the chairman of the board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority with the insured institution. It has been the Board's experience that where a substantial investor has established such high-level relationships with the institution, the investor generally is capable of influencing the institution's affairs. Further, the ability of the investor to place representatives in such positions of influence is often evidence of a result of the investor's controlling influence as well as the source of that influence.

E. Rebuttable Presumptions of Concerted Action

In order to clarify the question of when persons or companies will be deemed to be acting in concert, the regulation specifies several situations which give rise to rebuttable presumptions of action in concert. These presumptions are derived both from longstanding precedents interpreting the term and from the Board's practical experience. Particular questions have arisen in this area, for example, regarding the extent to which a company may be deemed to be acting in concert with its management officials or controlling shareholders. The Board has confronted a variety of situations in which persons owning voting stock in an insured institution also controlled companies that had invested in securities of the same institutions or had otherwise taken actions which would result in the acquisition of influence over the affairs of the institution. Consequently, the influence of the management official or controlling shareholder was enhanced by the actions of his controlled corporation. Such arrangements can also lead to the types of unfair affiliated transactions that are a major concern of the Holding Company Act.

In the Board's view, when a person acquiring shares in an insured institution is a controlling shareholder or management official of a company that

has made similar investments or has otherwise facilitated his acquisition, it is reasonable to assume that investments or actions of the company are the result of a common design. A coordination of action may result either from the controlling influence of the shareholder over the company or the fiduciary duty of the controlling shareholder or management official not to act against the interests of the company and its other shareholders.[6] To embody this principle in the regulations, the rule establishes presumptions that a company is acting in concert with a controlling shareholder or management official of such company where both the person and the company have certain specified relationships with the institution or have interests in the institution's stock. For instance, a controlling shareholder is presumed to be acting in concert with his controlled corporation if both own stock in an insured institution. If the company directly finances the acquisition of stock or is instrumental in obtaining financing for the stockholder through the pledging of its assets or other means, the stockholder also is presumed to be acting in concert with the company. A person is presumed to act in concert with the members of his immediate family as that term is defined at § 574.2(g). Persons who have specified business affiliations, in addition to their ownership of the stock of the institution in question, are deemed to act in concert in the purchase of the insured institution's stock. A purchaser of an insured institution's stock also is presumed to act in concert with any person who finances such purchase. Other business affiliations such as companies under common control and persons or companies that constitute a group for purposes of certain provisions of the Exchange Act regarding beneficial ownership reporting requirements and "participants" in proxy contests also are presumed to act in concert. *See* 17 CFR 240.13d-5(b)(1); 17 CFR 240.14a-11(b) (1982). Finally, as previously discussed in the description of the definition of the term "acting in concert", the Board presumes that a person or company acting in concert with a third party will act in concert with anyone else who also acts in concert with such third party. These presumptions are not conclusive and, as described below, are subject to a rebuttal process.

In its proposed revisions, the Board has limited one of the presumptions of concerted action between a company and its controlling shareholder to instances in which credit is provided by the company on other than arm's length basis. One commenter pointed out that the lending company would be required to place its assets in a position of risk for the benefit of its shareholder irrespective of the terms of the credit. The Board is persuaded by this argument and, accordingly, has provided in the final regulation that all extensions of credit from a controlled corporation to its controlling shareholder would raise the presumption of concerted action.

The Board received another comment which suggested that whenever social, family or business relationships exist or when any communications concerning the stock or management of the institution have occurred, concerted action should be presumed to exist. The Board believes that such a treatment would be too broad and would encompass groups where concerted action need not, typically, be present. The presumptions of concerted action adopted in the final regulation are limited to circumstances which in the Board's experience have evidenced concerted action. The Board notes, however, that persons or companies may also be found to be acting in concert whenever their actions are within the scope of the general definition of acting in concert at § 574.2(b), and that the presumptions of concerted action are not an exclusive statement of when concerted action may be deemed to exist.

In the description of the proposed revisions, the Board noted that the acquisition of stock by an employee stock ownership plan ("ESOP") raises control and other issues under the Holding Company Act. The Board has determined not to specify a presumption of concerted action based on the ownership of the stock by an ESOP at this time. The Board, however, has determined to codify its longstanding determination that a person or company is presumed to act in concert with any trust for which such person or company serves as trustee.

Finally, the Board takes this opportunity to reiterate its position concerning the ability of directors acting as a group to exercise control over the institution. It has been a longstanding position of the Board that directors are not considered to be acting in concert to control an institution solely on the basis of their position as directors. In the event directors attempt to direct the policies for the institution for their personal benefit, a group may deem to be formed which would require a filing of a notice of change in control pursuant to the Control Act and implementing regulations thereunder.

F. Rebuttal Procedures

Acquirors subject to determinations of control set forth in § 574.4(b) or concerted action presumptions set forth in § 574.4(d) are entitled to attempt to rebut such determinations or presumptions in accordance with the specific procedures established in the regulations. Section 574.4(e) establishes specified procedures for efforts to rebut the control determinations set forth in § 574.4(b) and the concerted-action presumptions set forth in § 574.4(d). In any instance in which a proposed acquisition would give rise to a rebuttable determination of control, the regulation requires that the acquiror either file the appropriate application or notice or submit written material attempting to rebut the determination of control and receive approval or acceptance thereof before proceeding with the acquisition. A rebuttal would set forth facts and circumstances supporting the absence of control. A control rebuttal submission also would separately include an agreement entered into by the acquiror with respect to certain types of activities.

In the Board's proposal this submission, modelled upon the rebuttal agreements that the Board has determined to be acceptable to date, would have included specific undertakings not to:

(a) Seek or accept any additional representation on the institution's board of directors;

(b) Have or seek to have any representatives serve on an executive or similar committee of the institution's board of directors;

(c) Engage in any intercompany transactions with the institution;

(d) Influence or attempt to influence in any respect the loan and credit decisions or policies of the institution, the pricing of services, personnel decisions, the location of any offices, or branching or similar activities of the institution;

(e) Influence or attempt to influence the institution's dividend policies and practices or any decisions or policies of the institution as to the offering or exchange of any securities;

[6] The proposition that a company and its controlling person should be considered to act in concert finds further support in the Holding Company Act which prohibits officers, directors, and 25-percent shareholders in a savings and loan holding company from acquiring control of other insured institutions. 12 U.S.C. 1730a(i)(2) (1982). This restriction was characterized as a complement to the Act's other curbs on holding company expansion rather than a limitation on directors, officers and 25-percent shareholders. H.R. No. 997, 90th Cong., 1st Sess. 14 (1967), *reprinted in* 1968 U.S. Code Cong. & Ad. News 1601, 1614.

(f) Have or seek to have any representative serve as an officer, agent or employee of the institution;

(g) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the institution's management or board of directors;

(h) Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the institution's shareholders other than in support of a solicitation on behalf of management of the institution;

(i) Seek to amend, or otherwise take action to change, the institution's bylaws, articles of incorporation, or charter;

(j) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the institution's management, policies or business operations; or

(k) Vote stock owned or controlled with power to vote other than on a *pro rata* basis in accordance with the vote of other stockholders on matters presented to the stockholders; or

(l) Seek or accept access to any nonpublic information concerning the institution except when the acquiror is already represented on the board of directors.

The rebuttal agreement, however, would have allowed a noncontrolling investor or a representative or nominee thereof to engage in activities necessary to the performance of his duties as a member of the insured institution's board of directors. The rebuttal agreement permitted activities listed above regarding influencing credit decisions (d) or dividend policies (e), proposing directors (g), soliciting proxies (h), amending charter or by-laws (i), exercising a controlling influence (j), or obtaining non-public information where necessary solely in connenction with an individual's performance of duties as a member of the board of directors.

These undertakings were based on rebuttal agreements currently employed by the Board under the current Control Act regulations, which are designed to ensure that an acquiror will not have the power to direct the management or polices of an insured institution and will not engage in the practices that the Control Act and holding Company Act were designed to prevent. A violation of the terms of the agreement would subject the signatory to such additional penalties, remedies and procedures as provided under applicable statutes or regulations for violations, willful or otherwise, of agreements with the Corporation.

The Board received numerous comments on the rebuttal procedure including several comments concerning specific provisions of the rebuttal agreement. Several commenters were concerned that while the rebuttal agreement would have the intended effect of ensuring that an investor would not be capable of controlling the insured institution, the agreement would go so far as to effectively strip investors of any voice in corporate affairs. One commenter suggested that such an extreme rebuttal agreement would insulate management from the discipline imposed by stockholders. The Board has carefully considered these comments and found a number to be persuasive. Thus, the rebuttal undertaking contained in the final regulation varies from that in the proposed revisions in two substantial areas, in addition to several minor clarifications. First, an acquiror may successfully rebut a determination of control and still be represented, either personally or by a nominee, by one member of the institution's board of directors. In accordance with the previous discussion concerning control factors, the Board believes that an investor may desire representation on the board of directors for reasons other than controlling an institution's management or policies. In order to accomplish this, the first restriction in the standstill agreement will allow representation by one director and the fourth restriction will allow an investor to propose one director if he is currently not represented on the Board.

The other major amendment to the proposed standstill agreement concerns the voting of stock owned by non-controlling investors. The Board has determined that voting of stock by an investor who, through the rebuttal process, has been determined not to be in control of the institution would be consistent with the Board's intent concerning rebuttal situations. The Board believes that once an investor is determined not to be in control of an institution and thus not capable of imposing his views on the management of the institution, there is no need to restrict that investor from reflecting his views by voting his stock. In fact, through the expression of interest by a substantial non-control investor, management of the institution will continue to be accountable to its actions. Thus, the provision of the proposed agreement concerning the requirement that a non-controlling stockholder vote its share on a *pro rata* basis has been eliminated. Similarly, the agreement has been modified to permit a party to solicit proxies, either in support of, or in opposition to a solicitation by management, except with respect to election of directors, which is treated separately. The Board also notes that unusual situations may require the use of modified rebuttal arrangements and expects that the rebuttal process will be sufficiently flexible to adapt to such situations.

Several commenters offered their views concerning the rebuttal procedure for control determinations. One commenter asserted that the rebuttal procedure would transform the notice procedure established by the Control Act into an approval procedure in contravention of Congressional intent. The Board notes that the rebuttal process is not mandatory; any acquiror may immediately file a notice of or application for a transaction which would fall within the specified control determinations. The rebuttal process is intended merely to allow an investor subject to a rebuttal control determination to demonstrate that it would not be in a position to exert control over an institution.

The Board notes that rebuttable control determinations are based on subjective statutory criteria concerning actual control, and that, in particular, the Holding Company Act provides that when control is determined on this basis, the Board must provide the acquiror with prior notice and an opportunity for a hearing. The rebuttable control determinations provided in the regulation give potential acquirors prior notice of what the Board generally considers actual control. Upon a determination by the Board or its delegate that the acquiror has not adequately rebutted the control determination, the acquiror should file the appropriate application. As noted previously, where acquirors subject to the Holding Company Act chose to proceed with an acquisition without filing and receiving approval of such an application, the Board has the firm intention to pursue such actions through additional administrative procedures.

The rebuttal process also would be available to a potential acquiror who would be determined to control an institution through the holding of revocable proxies, stock and irrevocable proxies, as described in § 574.4(b)(2). The Board recognizes that the rebuttal process would be somewhat different in connection with a determination of control that would arise as a result of holding revocable proxies. Therefore, in the case of a rebuttal of a determination of control of such type, the prospective proxy holder would be required to furnish such information as requested by the Corporation, potentially including a rebuttal agreement that would contain some but not necessarily all of the

specified agreement restrictions. The particular information and undertaking required will also depend upon the issue for which proxies are being solicited that raises the control determination.

Similarly, presumptions of concerted action in § 574.4(d) would be subject to rebuttal. The person or company presumed to be acting in concert may seek to rebut the presumption by filing a statement setting forth the facts and circumstances that support the assertion that no action in concert exists. Such a statement is required to be accompanied by an affidavit from each person or company seeking to rebut the presumption of concerted action, stating that such person or company has no agreements or understanding, written or tacit, with respect to exerting control, directly or indirectly, over the management or policies of the insured institution, including arrangements with respect to voting, acquisition or disposition of the insured institution's stock. The Board is not required to accept an attempted rebuttal which is inconsistent with facts known to it, or which, in the view of the Board or its delegate, fails to clearly and convincingly refute the presumption of concerted action. As with attempts to rebut a determination of control, the rebuttal must state that a violation of its terms would subject the signatory to such additional penalties, remedies and procedures as provided under applicable statutes or regulations for violations, willful or otherwise, of agreements with the Corporation. The Board also notes that execution of a false affidavit submitted to the Corporation may subject the person or company filing such an affidavit to criminal sanctions, *see*, e.g., 18 U.S.C. 1001 (1982), would be in violation of the Board's regulations, *see* 12 CFR 563.18(b), and would be considered a "presumptive disqualifier" if the party filing the false statement ever filed an application or notice, *see* § 574.7(g)(1)(v).

Rebuttal submissions must be submitted to both the Board's Office of Examinations and Supervision and Office of General Counsel; those Offices jointly have delegated authority to enter into control rebuttal agreements and to accept acting-in-concert rebuttal submissions on behalf of the Corporation. Within 20 calendar days of the submission of a rebuttal proposal, the filer will be notified either that more information is required or that a determination has been made to accept or reject the rebuttal. If notification is not received with the 20 day period, the rebuttal will be deemed to be accepted.

G. Safe Harbor

The regulation specifies a safe harbor which is available to passive investors, whose interest in an insured institution does not fall within control determinations specified in § 574.4 (a) and (b). By providing a regulatory endorsement of certain arrangements, the Board hopes to encourage investments in insured institutions. The safe harbor is available where an acquiror owns less than 25 percent of an institution's voting stock, no control factors are present, and the acquiror agrees to abstain from soliciting proxies from others, although the acquiror may vote freely and dissent with respect to its own stock. In order to avail itself of the safe harbor, an acquiror must simply certify to the Board that its ownership status meets the requirements of the safe harbor and that, before changing that status, the acquiror will either file and obtain acceptance of a rebuttal or file and obtain approval of the appropriate notice or application. In order to clarify the requirements of this filing, the specific text of the safe-harbor certification is contained in § 574.4(f)(1) of the regulation.

The Board received several comments with respect to the inclusion of the safe harbor provision in the regulations. One commenter was unsure whether the safe-harbor certification must be filed by all investors who are able to file it. The Board notes that the filing is not mandatory but rather is available to investors who seek the certainty that their investment complies with the Board's regulations under the Control and Holding Company Acts. Another commenter contended that the safe-harbor concept is naive and should be eliminated, asserting that any investor who owned 24.9 percent of the stock of an institution could not be passive. The comment evidences a lack of comprehension of the Board's overall regulatory scheme regarding control of insured institutions. It has been the Board's experience that in certain situations, an investor may own up to 24.9 percent of an institution's stock and not be capable of controlling the institution. For example, a 24.9 percent stockholder could not avail itself of the safe harbor provision unless it was not one of the two largest stockholders of the institution.

The Board also received comments which were concerned that in order to qualify for the safe harbor, the passive investor would be required to relinquish its rights as a shareholder. The Board notes in this regard that a passive investor would be able to vote its stock freely, and thus does not agree with the commenter's characterization of the safe harbor.

Certification of Ownership and Other Reports

A. Certifications of Ownership

A key element in the proposed revisions was an effort by the Board to provide a regulatory system that would facilitate the monitoring of compliance by investors with both the Control and Holding Company Acts in order to apprehend violators of the statutes. In an attempt to fulfill this goal, the regulations include a requirement that any person or company must file a brief certification upon the acquisition of 10 percent or more of any class of stock of any insured institution. Such a certification is required from the beneficial, not record, owner of the stock and simply identifies the insured institution and recites the fact that the acquiror owns 10 percent or more of any class of stock of the institution, that the acquiror is not currently subject to a rebuttable or conclusive determination of control and that the acquiror will not take actions that would give rise to a rebuttable determination of control under § 574.4(b) or a conclusive determination of control under § 574.4(a) without first filing and obtaining approval of a rebuttal or an application or notice, as appropriate. To make this filing as easy as possible, the specific text of the certification is set forth in the regulation.

This certification is not required to be filed by an acquiror that received Board approval of its acquisition under the Holding Company Act or if the acquisition was consummated after the expiration of the review period specified in the Control Act regulations. Acquirors that have filed materially complete applications or notices also are not subject to the filing requirement. Further, certifications need not be filed by an investor that owns stock of an insured institution upon the effective date of the regulation until such time as the investor acquires any additional stock.

The purpose of the certification is to provide the Corporation with notice of persons and companies that have amassed substantial amounts of the stock of an insured institution and thus are capable of acquiring control under the Board's regulations. The certification also allows the Board to obtain a commitment from such persons or companies that in the future they will observe the requirements of the regulations. The Board will not review the qualifications or resources of a

person or company upon the filing of such a report and the report will not be treated as an application or notice for purposes of commencing statutory or regulatory time periods. The Board, however, will consider the report in connection with any Control Act notice or Holding Company Act application which would be required if the acquiror proceeds to acquire more stock or takes on more indicia of control. Accordingly, failure to file the notice or the filing of an inadequate notice could be taken into consideration should the acquiror be required to file a full notice or application. *See* 12 U.S.C. 1730(q)(7)(E) (Corporation may disapprove Control Act Notice for failure to file required information); 1730a(e)(1)(B) (Corporation need not render decision on application until 90 days after submission of complete record to Board) (1982).

Comments were received suggesting that the Board prohibit the filing of certifications by record holders of stock, and that the Board require filing of the certification upon the acquisition of nonvoting as well as voting stock. The Board notes that it intended, in the proposed revisions, to require filing of the certification by *beneficial* owners and will not accept a filing in a "street name" by a mere record holder. Further, the final regulation has been clarified to indicate that ownership of 10 percent of *any* class of stock of an insured institution will trigger the filing requirement of a certification.

The certification is not a public document and is intended to assist the Board in its examination function. Several commenters requested that the Board make the certification a public document in order that institutions would be able to supplement the Board's efforts in monitoring compliance with the Act. The Board is not persuaded that the enhanced monitoring would offset the negative impact upon the flow of capital into the thrift industry caused by non-controlling investors' reluctance towards public disclosure of their stock holdings.

B. Reports on Loans

Paragraph (b) of § 574.5 would have implemented the Control Act requirements of notice to the Corporation whenever an insured institution or insured bank makes a loan secured or to be secured by 25 percent or more of the stock of an insured institution, 12 U.S.C. 1730(q)(9) (1982), by redesignating an analogous provision which appears in the current regulations at 12 CFR 583.18-3(c) (1985). Statutory exceptions are provided for loans where the borrower has been the owner of record for more than one year or where the stock is that of a newly organized institution prior to its opening. The notice required by this paragraph also is confidential and consists of a statement identifying the insured institution, the amount of stock involved, the date of the loan, and the name of the borrower. The Board notes that it is authorized to require additional information, but believes it is able to monitor such loans on the basis of information required by the regulation. *See* 12 U.S.C. 1730(q)(10). No comments were received on this provision. Upon further consideration of the statutory basis for this filing, the Board has specified in the final regulation that the filing must be made by the president or other chief executive officer of the lending institution.

Procedural Requirements

The Board has compiled the procedural requirements for all aspects of acquisition of control transactions in section 574.6. These provisions are designed to implement the substantive revisions to the regulations discussed herein and to better coordinate and facilitate the increased use of delegated authority in the application and notice processes.

A. Applications and Notices

Section 574.6(a) sets out the proper form to be used by particular acquirors for Board review of an acquisition of control of an insured institution. As is currently the case, the type of application required of a company will depend on whether the acquiror is currently a savings and loan holding company with respect to an insured institution and the type of acquisition transaction proposed. The applications, as currently described in 12 CFR 584.10, have not been revised at this time, although the Board expects to revise certain portions of the applications and notice forms in the future in order to incorporate newly defined methods of obtaining control and to facilitate the proposed new public-notice procedures.

Companies which are not currently savings and loan holding companies must file Form H-(e)1 for acquisitions of control of a single insured institution. Acquisitions of control of a single insured institution by an existing savings and loan holding company and acquisitions of control of more than one insured institution by any company, including a savings and loan holding company, require use of Form H-(e)2. Form H-(e)3 is used in the same instances as would require a Form H-(e)2 except that the proposed transaction involves the merger of an insured institution or existing savings and loan holding company rather than an acquisition of stock. Companies that acquire control in a reorganization which is exempt from the Board's prior approval pursuant to § 574.3(c)(1)(ii) file the Form H-(e)4 informational filing in order to claim exempt status. Persons seeking to acquire control of an insured institution shall continue to use the Change in Savings and Loan Control Act Notice Form 1173, Parts A and B. The Board received no comments on the applications and notice required to be filed, and these provisions were adopted as proposed.

Section 574.6(b) sets out the filing procedures for the previously described applications and notices, detailing the proper place of filing and the number of copies to be filed. The Board has amended its proposal to facilitate the use of expanded delegations of authority. An acquiror that believes its acquisition to be eligible for approval under delegated authority is required to file two copies of the application or notice with the Principal Supervisory Agent. Such filing must include a brief summary of the proposed transaction including a statement as to why the proposed acquiror asserts the notice or application may be processed under delegated authority, and an affirmative statement that none of the factors specified in § 574.8(a)(1) which would preclude action under delegated authority are present. Such statement must be clearly labeled "Statement Regarding Eligibility for Processing Under Delegated Authority." The Board believes that an acquiror that makes an accurate claim for review under delegated authority will have its application or notice processed more expeditiously. Filing procedures for non-delegated applications and notices also are specified.

Section 574.6(b)(4), concerning the circumstances in which an application or notice may be amended, has been altered from the proposed revisions where it was set forth at § 574.6(b)(3). Additional information may be filed in an amended application or notice upon the applicant's own initiative as well as upon the request of Supervisory Agent. The Board believes that additional information should be filed if it would materially affect the Board's determination. In the event that the Board determines that the amendment would alter materially information which is available to the public, the staff may require the applicant to republish the notification required at § 574.6(d). Subparagraphs (5) through (9) specify the manner in which documents required by the regulation including rebuttals, safe-harbor claims, 10 percent

ownership certifications, and reports on loans secured by stock, respectively, must be filed with the Board. The Board received no comments on these filing requirements.

B. Sufficiency of Filings

The Board has specified, in § 574.6(c), that an appliction or notice will be deemed sufficient upon inclusion of all information specially called for in the appropriate form of application or notice (unless waived in accordance with the provisions of such form) as well an any additional information the Corporation or its delegate may require by specific written request in connection with a particular notice or application. The regulations require a complete description of all proposed acquisitions. In many instances, the responses to the items in the forms may raise additional issues on which the Board needs information before it can properly evaluate a notice or application. The reservation of the power to make additional inquiries enhances the Board's ability to conduct thorough investigations of acquirors. Further, the Board may need to make further inquiries of the acquiror on the basis of information received from public comments. In order to expedite the review process, however, the regulations provide that once additional information has been requested, no further information may be requested unless the subsequent request is derived from or prompted by information already furnished, involves material information previously concealed or which was otherwise unavailable, or pertains to developments that have occurred subsequent to the original request for additional information. In addition, the Board wishes to note that once a notice under the Control Act has been found to be sufficient for purposes of commencing the 60 day period of review, only the Board may cause the review period to be halted and commenced again.

The regulations require the Board or its designees to make a determination as to the sufficiency of a particular notice or application within 10 business days of the close of the comment period described in subparagraph (e), or extension thereof. Upon the expiration of such 10 day period, a notice or application will automatically be deemed sufficient unless additional information has specifically been requested in writing by that date. If additional information is requested, the Corporation or its designee must make a determination as to its sufficiency within 10 business days of the timely filing of such requested additional information, or the filing automatically will be deemed to be sufficient.

In an effort to further expedite the application and notice review process, the Board has implemented an internal application tracking system which, among other things, contains deadlines for completion of certain review functions by the Board's staff. The Board expects that factors such as the 10-day period to determine sufficiency, the focusing of requests for additional information and the new tracking system should result in a streamlined review procedure with expedited determinations. The Board also believes, however, that applicants have a responsibility to respond expeditiously to request for additional information in connection with their submissions and that undue delay in this respect unfairly burdens the Board's resources. Therefore, the regulations also specify that a failure to respond to a request for additional information will, after 30 days, be deemed to constitute withdrawal of an application or notice.

In order to clarify the appropriate review functions, the final regulation expressly provides that the commencement of a review period is affected by actions of the Principal Supervisory Agent or his delegate only with regard to applications or notices which the PSA may approve or disapprove as provided in § 574.8(a). The regulation sets forth a 30 day automatic approval provision for exempt holding company reorganizations filed on Form H(e)–4 pursuant to the approval exception in § 574.3(c)(1)(ii). Finally, section 574.6(c) reserves the right of the Corporation to waive information requirements in supervisory cases or which are otherwise determined to be unnecessary. The Board received no comments on its determinations regardings sufficiency and waiver.

C. Newspaper Publication

Section 574.6(d) sets out the newspaper publication required of acquirors filing Holding Company Act applications and Control Act notices. The regulation reconciles the currently substantially different approaches to the publication requirements in the current implementing regulations. The Holding Company Act regulations now require applicants to publish notice of their filing within 10 days after being notified by the Supervisory Agent that the application is complete. 12 CFR 584.4(e) (1985) (incorporating by reference procedures of 12 CFR 543.2(d)). Upon publication, the application and related communications become publicly available except to the extent disclosure is exempted by the Freedom of Information Act, 5 U.S.C. 552 (1982). See 12 CFR 543.2(d)(4) (1985). On the other hand, the current Control Act regulations specify that notices are for the use of the Corporation and appropriate state supervisors and cannot otherwise be disclosed except in accordance with the Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552 (1982), and the Privacy Act, 5 U.S.C. 553a (1982), *See* 12 CFR 563.18–2 (1985).

As originally promulgated, the Control Act regulations were silent as to the public availability of notices. *See Amendments Relating to the Change in Savings and Loan Control Act of 1978,* Board Resolution No. 79–121, 44 FR 10500 (Feb. 21, 1979). In 1980, the Board amended the regulations to provide that, except for confidential portions, notices would be available for public viewing. *Federal Savings and Loan Institutions; Change in Control.* Board Resolution No. 84–491, 45 FR 55693, 55696 (Aug. 21, 1980) (See former § 563.18–2(e)(4)). In addition, the target institution was given special notice of the filing of a Control Act notice or a rebuttal of a control presumption and a period of 10 or 20 days (depending on the type of filing) in which to submit its views regarding the acquiror. 45 FR at 55695–96 (former § 563.18–2(c)(3) and (f)).

In Resolution No. 82–507, dated July 29, 1982, however, the Board determined to delete the provisions for special notice to the target institution and to further specify that notices would be kept confidential. *Amendments Relating to Change in Control,* Board Resolution No. 82–507, 47 FR 34120 (Aug. 6, 1982). This change in approach was prompted by concerns that disclosure of notices could prematurely and materially affect the public trading price of the institution's securities and thus complicate acquisitions of insured institutions. 47 FR at 34122. It was also noted that in the case of a proposed tender offer the potential acquiror also may be required to make certain disclosures as if a tender offer had commenced as of the filing date, even though it actually had not. *Id. See* Exchange Act Rule 14d–2, 17 CFR 240.14d–2 (1984) (Public disclosure of identity of bidder and target, amount of securities sought, and price to be paid deemed commencement of tender offer); Interpretative Release Relating to Tender Offer Rules, Release No. 34–16623, 45 FR 15521 (Mar. 11, 1980); 3 Fed. Sec. L. Rep. (CCH) 24,2184 (Mar. 5, 1980) (Public filing with federal agency can trigger tender offer).

Although the Board continues to acknowledge these concerns, it is also of the view that a better balance can be struck between the needs of acquirors for confidentiality and the Board's interest in obtaining all information that may be of value in its review process. The Board finds that public participation in the applications process can be helpful in the execution of its duties, particularly in bringing to its attention information that would prevent acquisitions of control of insured institutions by unqualified or dishonest acquirors. Moreover, the Board notes that in adopting the Change in Control Act, Congress compared control acquisitions review to that exercised over charter applications, mergers branching and other transactions in which public notice has long been a feature. *See* H.R. Rep. No. 1383, 85th Cong. 2d. Sess. 19 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 9291.

The final regulation institutes a uniform publication procedure for Holding Company Act applications and Control Act notices. Section 574.6(d)(i) directs acquirors to follow procedures which have been modified from those currently required of holding company applicants in 12 CFR 543.2(d). Every acquiror is required to publish notification of a proposed acquisition of control of an insured institution within 10 calendar days of filing an application or notice. The public notification, in the form prescribed in the regulation at § 574.6(d)(2), must be published in the business section of a newspaper having general circulation in the community in which the institution's home office is located. The notice must contain only the basic information on the name of the prospective acquiror, the institution whose stock is sought to be acquired, and the date of filing of the acquiror's application or notice. The public notification also includes information concerning the procedures and deadlines for commenting upon the filing and where the application may be reviewed. Applicants are required to mail a copy of the public notification to the institution whose stock is sought to be acquired. Copies and a publisher's affidavit of publication must be filed promptly after publication.

Upon publication, non-confidential portions of an application or notice become publicly available. An acquiror may claim confidentiality for portions of an application or notice, including information that the acquiror asserts would trigger the commencement of a tender offer under Exchange Act Rule 14d-2. Price or other terms of an acquisition as well as personal financial information also may be excluded from disclosure on the basis of personal privacy or business confidentiality, if confidential treatment is requested in accordance with the procedures described in the regulation. In the Board's review, the disclosure required by the proposal should not upset trading or disadvantage acquirors and should not, of itself, be deemed to trigger the commencement of a tender offer under Exchange Act Rule 14d-2. In any event, information which will be disclosed pursuant the regulation may now be obtained by any party through requests under the Freedom of Information Act.

The Board also notes that since it proposed to implement public notice requirements under the Control Act, both the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have adopted the approach proposed by the Board and have proposed similar amendments to regulations under the Change in Bank Control Act of 1978, 12 U.S.C. 1817(j), which would also require public notification of proposed acquisitions of control of banks under their respective jurisdictions. *See* 50 FR 19183 (May 7, 1985); 50 FR 41361 (October 10, 1985).

The Board received five comments on its proposal to require public notification of notices of change in control. Four of the commenters strongly supported the Board's proposal on the basis that increased input from the target institution and the general public would enhance the Board's ability to render determinations in accordance with criteria enumerated in the Control Act and the Holding Company Act. The commenter who opposed expanding the publication requirement to Control Act notices asserted that the Control Act procedures would be unduly disrupted, and publication would present management with another weapon against potential acquirors. The Board disagrees with these assertions and does not believe that the public notice provisions will disrupt the Board's review process. While the commencement of the review period would be delayed slightly until the close of the public comment period, the Board has provided other limitations in the review process which should result in acquirors receiving a more expeditious determination of Control Act notices than under the current regulations. These limitations include restriction of the scope of and time for requesting additional information, the limitation on the time provided to determine sufficiency and the requirements that the Board, rather than its staff, approve any recommencements of the review period, as well as the Board's newly implemented internal applications tracking system.

Due to the minimum information regarding the details of a proposed acquisition that will be disclosed, management of an insured institution will be provided only with essential information concerning the name of acquiror and the date of the filing. In response to the concern of the commenter that management of a target institution may use the publication and comment process to unduly thwart the efforts of a potential acquiror, the rule has been amended to explicitly provide that the Corporation will not consider unverified accusations or materials which the respondent is unwilling to have disclosed to the acquiror, and that such materials, as well as materials filed after the expiration of the public comment period, will not be part of the record considered by the Board.

E. Public Comment

Section 574.6(e) sets out the procedural requirements for public comments to be filed in response to the required public notification, which are similar to the procedures used in connection with other applications filed with the Board found in 12 CFR 543.2(d). Comments submitted in connection with an application or notice would be considered part of the filing and release of information contained in comments would be subject to the same procedures and standards as would be applied to release of information contained in the application or notice. The Board received one comment which asserted that public comments must be accorded confidential treatment in order to avoid a chilling effect on potential commenters. Ironically, this commenter also made recommendations that rebuttal filings, certifications of ownership and other documents filed by acquirors be made public documents. The Board does not believe that public availability of comments will deter people from filing information. The Board has experience with the public comment provisions in Holding Company Act and other applications and is not aware of any disinclination to file information because such information is publicly available. In the final regulations, comments on an application or notice will continue to be disclosable in the same manner as information in applications or notices. In addition, as already noted above, in order to prevent distortion and manipulation of the public comment process to induce inordinate delays in the Board's review or to unfairly tilt the

process in favor of either the acquiror or the target institution, the regulations specifically provide that comments received after the expiration of the comment period, unverified accusations or materials that the submitter is unwilling to have disclosed to the acquiror, shall not be part of the record and shall be considered by the Corporation.

F. Disclosure and Confidentiality of Filings

Section 574.6(f) sets forth the procedure for disclosure of material contained in an application or notice or other filing, as well as the procedure necessary for an applicant to obtain confidential treatment of any portion of an application or notice. Disclosure shall be made in accordance with the Freedom of Information Act and shall include all material for which confidential treatment has not been granted by the Board.

In order to obtain confidential treatment, an applicant must supply a request and justification for confidentiality at the time the notice or application or other submission is made which specifies the basis for confidential treatment of particular items. General, unspecific, all-inclusive requests for confidentiality will not be granted. Information for which confidentiality is requested must be clearly marked and segregated from other material. Thus, for example, an acquiror or commenter may submit a "confidential" and "Non-Confidential" set of its filing. The Board or its delegate may make a determination regarding the appropriateness of the assertion of confidentiality at the time a request for disclosure is made or any time prior thereto. Five business days notice will be provided to an applicant or other filer where the Board has determined to release information for which a claim of confidentiality has been made. The final regulation sets forth the information which must be supplied to the Board to substantiate a request of confidentiality, in § 574.6(f)(5). Included in the substantiation must be justification for the retention of information as confidential after the consumation of the proposed transaction. All approvals of confidential-treatment requests shall be considered to remain confidential until that time.

The regulation permits the waiver by the Corporation of the requirements of public notification, public comment and disclosure in supervisory cases. The Board received no comments concerning its provised revisions to disclosure and confidentiality requirements.

G. Private Rights of Action

In the preamble to the proposed revisions the Board discussed the role of the public in the Board's administration of the Control and Holding Company Acts. The Board believes, for example, that the new regulations which encourage public participation through the provision of information regarding potential acquirors will supplement the Board's efforts to compel compliance and enhance the Board's oversight of the acquisition process. Information supplied by a target institution is particularly beneficial because the target institution often is in the best position to detect concerted activity in the acquisition of its stock or the existence of other substantial stockholders who may be subject to one of the Acts.

The issue of the existence of private rights of action under the Acts is another area where the role of the public in the Board's administration of the Acts is presented. The Control Act and Holding Company Act neither expressly prohibit nor provide for an action to be brought by third parties to compel compliance with either statute. The Board is well aware, moreover, that the determination of whether a target institution—or even some other third party—should be found to have a private right of action is one that is made by the courts and is not decided simply by the Board expressing its views on the issue. However, because the Board believes that it would be appropriate to recognize limited private rights of action under both Acts the Board has respectfully concluded that it would be useful to set out its views on this issue.

In assessing whether a private right of action should be implied, the Board has considered the criteria articulated by the Supreme Court in *Cort* v. *Ash*, 442 U.S. 66 (1975). In *Cort*, the Supreme Court set forth four standards for determining whether a private right of action would be implied:

1. Is the plaintiff 'one of class for whose *especial* benefit the statute was enacted,' * * * that is, does the statute create a federal right in favor of the plaintiff?;

2. Is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?;

3. Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?;

4. Is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?

422 U.S. at 78 (emphasis in original).

The Board is aware that several federal district courts have reached conflicting results as to whether an implied private right exists under the Control Act or the Holding Company Act. With respect to at least the first three criteria articulated in *Cort*, the Board believes that factors weigh in favor of the existence of an implied right on behalf of a target institution to bring an action to compel the filing of an application or notice that may be required under either Act. The language of the Control Act and Holding Company Act provide the Board with authority to deny proposed acquisitions of control which "might jeopardize the financial stability of the *institution*." 12 U.S.C. 1730(q)(7)(c) (1982) or which "would be detrimental to the *institution*. . . ." 12 U.S.C. 1730a(e)(1)(B) (1982). Thus, the statutory language clearly indicates that the target insititution is one of the class for whose "especial benefit" the statutes were passed. The Board notes that the parties most directly effected by the stability of an institution, its depositors, generally will be unlikely to possess the financial strength and cohesiveness and knowledge of a prospective acquiror's actions adequately to represent the interests of their institution in initiating an action against an acquiror that allegedly has violated one of the Acts. Thus, in practice, only the target institution generally will be in a position effectively to protect the rights of its depositors. *See GAF Corp. v. Milstein* 453 F.2d 709, 719–21 (2d Cir. 1971) *cert. denied*, 4406 U.S. 901 (1972); *Florida Commercial Banks v. Culverhouse*, No. 84–5921 (11th Cir., October 7, 1985).

The Board is not aware of any indication of explicit legislative intent either to create or deny a private right of action. However, the Board notes that since the passage of the statutes, several courts have found implied rights for target institutions under the Change in Bank Control Act as well as the Control Act. In 1982, after several of these cases were decided, Congress adopted extensive amendments to the federal statutes regulating financial institutions in this country. Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469 (1982). Congress did not amend the provisions of the Control Act to bar private actions. The fact that Congress "left intact the statutory provisions under which the federal courts had implied a cause of action is itself evidence that Congress

affirmatively intended to preserve that remedy." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381–382 (1982).

Further, the Board believes that certain types of actions may be brought by target institutions consistent with the underlying purposes of the legislative scheme of the Acts. The Board is aware that courts interpreting the Change in Bank Control Act and Bank Holding Company Act (which are substantially similar to the Control and Holding Company Acts, respectively) have rejected suits by target institutions because it was felt that statutes looked solely to the relevant federal agency to make the determinations of whether acquirors were *qualified* to obtain control under the applicable statutory criteria. *See Financial Corporation v. Dayco Corp.*, No CV 80–RVK, slip op. at 10, 12 (C.D. Cal. Sept. 26, 1980); *see also Quaker City National Bank v. Hartley*, 533 F. Supp. 126 (S,D, Ohio 1981) (interpreting Change in Bank Control and Bank Holding Company Acts).

The Board does not disagree with such holdings, but believes it is important to distinguish the subject matter of the actions that may be brought by private litigants. The remedy sought is important in considering a private right of action exists. *See, e.g., Florida Commercial* v. *Culverhouse, supra*. Where the Board has not taken a position that an application or notice is *not* required, private actions to enjoin an acquisition prior to an application or notice being filed and acted on by the Board, as distinct from an effort to second-guess the Board's judgment on the merits of whether a particular acquiror is qualified, would appear consistent with the congressional purpose of bringing a broad range of control acquisitions under the Board's scrutiny. If a target is not allowed injunctive relief, an acquiuror could circumvent the requirement of filing a notice or application before controlling purchases were made and thereby exercise control, thereby defeating the purpose of the Acts.

The Board believes that the rules adopted today specify with sufficient clarity when the filing of an application or notice is required, and thus that in situations where the Board has not taken a position as to whether an application or notice, is required, the presentation by a target institution in private litigation of the issue of whether an application or notice should have been filed should not normally involve a court in highly subjective determinations where agency expertise is extremely valuable. By contrast, the Board's determination on the merits of a particular application or notice is predicated on the agency's expertise and years of immediate experience review applications and notice and supervisory acquirors. Thus, the Board believes that any implied right of action should not be extended to include second-guessing of the Board's substantive decisions. Such a result, in the Board's opinion would be inconsistent with the purposes and overall scheme of both Acts and is not supported by an analysis of the *Cort* factors.

The Board received several comments on the existence of private rights of action to compel compliance with the Acts, all of which were of the belief that such rights do exist under the Acts.

Determination by the Corporation

A. Application Review Criteria

The criteria with which the Board evaluates applications and notices submitted pursuant to this Part are detailed in § 574.7. These provisions are designed to facilitate expanded use of delegated authority and to expedite the overall regulatory review process by clarifying standards that will be applicable in review of applications and notices. Paragraphs (a), (b) and (c) manifest the requirements of the Holding Company Act for approval of an acquisition of control of an insured institution. As set forth in paragraph (a), the Holding Company Act provides a slightly different standard for acquisitions of control of a single insured institution by a company which is not a savings and loan holding company than for other acquisitions by companies. The Board is required to approve such an application for the initial acquisition of a single insured institution which is filed on Form H–(e)1, if the statutory criteria are met. As set forth in paragraph (b), other applications, filed on Form H–(e)2 or H–(e)3, *may* be approved by the Board if the statutory criteria are met. As part of its review of applications under paragraph (b), the Board must request and consider a report on the competitive factors involved in the transaction as required by the Holding Company Act at 12 U.S.C. 1730a(e)(2) (1982). The Board notes that in its experience a transaction which would be disapproved under the discretionary standard of paragraph (b), would generally also be disapproved under the standard of paragraph (a).

The substantive criteria used in considering all Holding Company Act applications are restated from the Holding Company Act in paragraph (c). *See* 12 U.S.C. 1730a(e)(2) (1982). The focus of the Board's inquiry regarding acquisitions by a company would continue to be whether the financial and managerial resources and future prospects of the company and institution involved are detrimental to the institution or the insurance risk of the Corporation, and in an H–(e)2 or H–(e)3 application, the convenience and needs of the community to be served. The Board wishes to emphasize, however, that unless an application specifically indicates that the acquiror intends to acquire less than 100 percent of an insured institution's voting stock, the application will be reviewed, and an acquiror's financial resources analyzed, as if the acquiror seeks to acquire 100 percent of such stock. Where an application is so limited, the Board may condition its approval to such amount, in which case additional acquisitions could be made only if the acquiror sought to amend its original application.

As provided in the Holding Company Act, the Board's discretion is limited to the extent that it may not approve control acquisitions with monopolistic tendencies. 12 U.S.C. 1730a(e)(2)(A) (1982). Nor may the Board approve a proposed holding company acquisition which would substantially lessen competition unless the anticompetitive effects of the transaction are clearly outweighed by a greater service to the convenience and needs of the community. *Id.* at 1730a(e)(2)(B). The Board's discretion continues to be limited by the statutory prohibition against the creation of new multi-state savings and loan holding company networks and the expansion of existing multi-state holding companies into new states, except, in both cases, in accordance with the conditions set forth in 12 U.S.C. 1730(m) (1982). *Id.* at 1730a(e)(3). The Board received no comments on the criteria for review of holding company applications.

B. Notice Review Criteria

The procedures relating to the review of a notice submitted under the Control Act, now found at 12 CFR 563.18–2 (e)(3), (g), (h) and (i) (1985), are set forth in paragraphs (d) through (f) of § 574.7. Paragraph (d) restates the statutory criteria used to review a notice filed under the Control Act. *See* 12 U.S.C. 1730(q)(7). One commenter asserted that the criteria for review of a change in control notice are quite general and would provide the Board with unbridled discretion. As the criteria for review of Control Act notices merely restate the criteria found in the statute, the Board believes that such comment is unfounded. The Board, however, has

provided "presumptive disqualifiers"—which are applicable under both Acts—in order to clarify the Board's interpretation of some of the general criteria used under either statue, as described more fully below. The Board notes that the Control Act permits but does not require the Board to deny a notice which does not comply with the statutory criteria.

Because the Control Act involves a notice procedure, a potential acquiror need not receive approval to consummate the acquisition but merely, as stated in paragraph (e), may await the conclusion of the 60 day review period, or an extension thereof provided by the Board in accordance with § 574.6(c)(2)(i). Such acquisition must be consummated, however, within one year of the conclusion of the review period and only in accordance with the terms and representations stated in the notice. Further, a material change in circumstances prior to the acquisition would require that an amendment to the notice to be filed and would reinstate the review period. Prior to the expiration of the review period or an extension thereof, the Board generally will provide a potential acquiror with written notice if it intends not to disapprove the proposed acquisition. As in the case of review of applications under the Holding Company Act, the Board wishes to emphasize that unless a notice specifically indicates that an acquiror intends to acquire less than 100 percent of an insured institution's voting stock, the notice will be reviewed, and the acquiror's financial resources analyzed, as if the acquiror seeks to acquire 100 percent of such stock. Where a notice is so limited, the Board may condition its non-disapproval to such amount, in which case additional acquisitions could be made only by amendment to the acquiror's original notice. Upon a written statement of non-disapproval from the Board or its designee, the review period is deemed to be accelerated and the transaction may be consummated immediately thereafter in accordance with any conditions set forth in the letter of non-disapproval. *See* 12 U.S.C. 1730(q)(1).

In the event the Board or its designee determines to disapprove a notice of change in control, the proposed acquiror will be notified in writing. As set forth in paragraph (f) of § 574.5, such notification will include a statement of the grounds for disapproval and a statement that the acquiror within 20 days of the receipt of such notice of disapproval may, if the disapproval was issued by the Principal Supervisory Agent pursuant to delegated authority, request review of such disapproval by the Corporation pursuant to § 574.8(a)(4), or, if such review is denied, or the disapproval issued by the Corporation, may within 10 days of receipt of the notice of disapproval, or notice of the Corporation's decision not to review the denial, request an administrative hearing under paragraph (4) of the Control Act.

C. Presumptive Disqualifiers

The statutory criteria employed by the Board in making determinations with regard to applications under the Holding Company Act and notices under the Control Act includes general concepts such as the "managerial and financial resources" or "competance and integrity" of an acquiror. Through its experience in administrating the Acts, the Board has encountered a variety of situations which have proved to be indicative that a potential acquiror may not meet the statutory tests. In an effort to facilitate the review process, the Board has collected these factors as "presumptive disqualifiers", in order to put potential acquirors on notice of the grounds upon which an application or notice may be disapproved unless adequately refuted by the acquiror.

Section 574.7(g)(1) sets out presumptive disqualifiers which may indicate a lack of integrity on the part of the acquiror. The Control Act specifies the integrity of an acquiring person or proposed management personnel as a factor the Board must consider in reviewing notices. 12 U.S.C. 1730(g)(7)(D) (1982); *See also* 12 CFR 574.7(d)(4). The Holding Company Act requires an acquiror to have the requisite managerial resources to obtain approval to acquire control of an insured institution. The legislative history manifests Congress' intent that the term "management resources" relate to management's integrity as well as competence. *See* H.R. Rep. No. 997, 90th Cong. 1st Sess. 6 (1967), *reprinted in* 1968 U.S. Code Cong. & Ad. New 1601, 1606 ("companies with management of doubtful * * * integrity would be barred from gaining control of an insured institution."). The factors which would give rise to a presumptive disqualification of a proposed acquiror on integrity grounds include criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror, by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, and self-regulatory trade or professional organization, or any foreign government or governmental entity, against an acquiror or affiliates of an acquiror involving: (1) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, or ogranized crime or racketeering; (2) voliations of securities or commodities laws or regulations; (3) violations of depository institutions laws or regulations; (4) violations of housing authority laws or regulations; or (5) violations of the ethical codes of a self-regulatory trade or professional organization. Such events would be relevant if they occurred during the preceding 10 years. Other presumptive disqualifiers concerning an acquiror's integrity include denial of an application or withdrawal of an application after notice of intent to deny an application relating to the organization or acquisition of control of a financial institution, the liquidation, conservatorship, or receivership of any depository institution of which the acquiror was a controlling shareholder or management official; conviction of a felony by the acquiror or any affiliated person or affiliate; or knowingly making any written or oral statement to the Corporation (or its delegate) in connection with an application, notice or other filing under Part 574 that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished, or requested in connection with such application, notice or other filing. Finally, applicants would be subject to presumptive disqualification, on integrity grounds, if they submit applications while they are in violation of either Act or the Board's regulations thereunder, unless the violation arises as a result of acquisition of an amount of stock or a control factor with respect to the insured institution where the acquisition of such amount of stock or control factor was beyond the control of the applicant.

The Board received one comment concerning integrity-related presumptive disqualifiers which objected to the inclusion of consent agreements or undertakings by acquirors as presumptive disqualifier because "inadvertent violations of technical regulations" would not necessarily impute a lack of integrity to the acquiror. The Board wishes to emphasize that these factors are presumptions which an acquiror may overcome through explanation in the application or notice.

It has been the Board's experience, however, that consent decrees or undertakings often involve more than inadvertent violations of technical regulations. Therefore, the final regulations continue to include consent decrees as presumptive disqualifiers.

The regulations also set out presumptive disqualifiers based on financial factors. The Holding Company Act provides the Board authority to deny any acqusition application if the proposed acquiror lacks the requisite financial resources. 12 U.S.C. 1730a(e)(1)(A); (2). The Control Act provides the Board with the authority to disapprove a notice filed on the basis of the acquiror's financial condition. 12 U.S.C. 1730(q)(8)(C). In the proposed revisions, the Board set out the following factors which would presumptively disqualify an acquiror: (1) With respect to a company, failure to agree in writing that the company will ensure that its subsidiary insured institution shall have, at the end of each calendar quarter, net worth at least equal to three percent of liabilities, plus the growth and contingency factors as determined in § 563.13 or such greater amount that may be required pursuant to § 563.13, and that, where necessary, the company will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with its net worth maintenance undertaking; (2) liability for amounts of debt which, in the opinion of the Corporation, create excessive risks of default and pressure on the insured institution; or (3) a business plan projecting activities for the target institution that are inconsistent with economical home financing.

The Board received a number of comments which disagreed with its proposal to include the net worth maintenance agreement described in (1) above. Commenters were concerned that such a requirement would impede investment in the thrift industry. The Board notes, however, that Holding Company Act acquisition applications are currently susceptible to approval under authority delegated to the Principal Supervisory Agent only upon acceptance of the net worth maintenance agreement. Further, as a presumptive disqualifier, the net worth maintenance agreement could have been obviated upon reasonable justificiation of the acquiring company. Nonetheless, the Board has determined to return the net worth maintenance guarantee requirement to a standard of delegated approval and has modified the provisions of the guarantee as discussed below.

The Board received no comments on the factors concerning debt of the acquiror and business plans. The Board continues to believe that these two factors are key to an assessment of the merits of an acquisition proposal. In the former respect, for example, the Board has become increasingly concerned with the potential negative impact and pressures that effect an institution where the institution is acquired in a transaction where the acquiror is subject to substantial debt, or in a so-called "leveraged buy-out." The total absence of any business plan, or a business plan projecting activities inconsistent with economical home financing are also of serious concern to the Board. Accordingly, the debt and business plan factors remain as presumptive disqualifiers in the final regulation.

The existence of any of the above considerations in the case of any acquiror or affiliate of the acquiror may constitute grounds for denying a proposed acquisition if not adequately addressed by the applicant. In light of inquiries posed to the staff of the Board concerning the intended impact of the presumptive disqualifiers, the Board takes this opportunity to note that it has codified factors as presumptive disqualifiers in order to notify the public of concerns that the Board will raise in its review process. By putting acquirors on notice of potential problems, the Board intends to expedite the review process and limit time which would otherwise be spent during requests for additional information on these factors. The Board did not intend to indicate that an acquiror, subject to a presumptive disqualifier, need not apply to all. The Board intends rather that the burden be on the applicant to explain and satisfy the Board when a presumptive disqualifier is present. A potential acquiror must specifically address these factors by submitting materials indicating that, in the case of integrity-related factors, the conduct has ceased or has become irrelevant or otherwise should not warrant a denial or disapproval. A rebuttal in such situations may indicate, if appropriate, that the conduct has ceased, that steps have been taken to prevent a reoccurrence, and that there is a reliable indication that those steps have been effective, such as, for example, the passage of a meaningful period of time without repetition of the conduct. With respect to financial resource-related factors, the submission of an acceptable business plan obviously is one step that would assist in making the requisite showing to overcome a presumption of disqualification.

Delegations

A. Summary

As part of its effort to increase the speed with which applications and notices are processed, without sacrificing the quality of review, the Board proposed substantial amendments to its delegations of authority. The regulations provide a uniform system of delegations for determinations under both the Control Act and Holding Company Act. The delegation formula should increase the number of applications processed in the field and is intended by the Board to operate in conjunction with the other substantive revisions of the regulations to increase the overall efficiency of the application and notice processing system. The Board has already implemented internal processing deadlines to aid in achieving this result. Further, the Board would expect to actively review the functioning of the expanded delegation process through the use of post-audits to ensure that delegation accomplishes the Board's goal of expediting the acquisition process without sacrificing the quality of review that must remain crucial to fulfillment of the Board's statutory responsibilities under the two Acts.

B. Authority of Principal Supervisory Agent

The new delegations for the first time confer the authority to deny as well as approve applications. The Principal Supervisory Agent is granted the authority to approve every application or issue notice of intent not to disapprove every notice that does not fall within one of four specified categories. Authority is not delegated to the Principal Supervisory Agent in the event that the acquisition is proposed to be accomplished in connection with a transaction where certain disclosure documents are required to be filed under section 13 or section 14 of the Exchange Act. This reservation of authority reflects the fact that a disclosure document requiring review will be filed with the Washington staff in connection with such a transaction and that many such institutions are likely to present special issues because they are recently converted to stock form. Under such circumstances, an acquisition may raise particular concerns that should be addressed by the Board and its Washington staff. In addition, review of such acquisitions can be done more

efficiently in the same office where the Exchange Act filings of such institutions are reviewed. The Board received no comments on this aspect of the delegation provisions.

The second instance in which reviewing authority would be reserved to the Board's Washington staff involves contested acquisitions of insured institutions due to the potential complexity of, and issues that may be presented in such transactions. An acquisition proposal is considered to be contested if opposed by management of the insititution or a competing acquiror. The Board believes that review by its Washington staff will allow better coordination of any enforcement or litigation issues that could arise during the course of the review. While the Board received no comments concerning the contested acquisition delegation provision, it has, upon further consideration, determined to modify the proposed provision to require that where an acquisition is contested, all acquisition applications or notices with respect to such institution be reviewed by Washington staff. The Board believes that in the case where conflicting offers have been made to acquire an insured institution, both applications should be processed in a similar fashion.

The last area reserved from delegated authority, in the proposal, concerns novel issues of policy or law which in the opinion of Board staff warrant consideration by the Board. In these cases, the Board itself will be provided the opportunity to make the determination. The Board received no comments on this aspect of the delegation proposals. The Board wishes to emphasize that it expects staff of the Federal Home Loan Banks to be in close contact with the Board's Washington staff to assess whether an application or notice presents a legal or policy issue that warrants review by the Board. In addition, the Board regularly advises the staff of the Federal Home Loan Banks of issues of concern to the Board through supervisory bulletins and communications from various Offices of the Board as well as the Board itself. The Board expects that applications presenting such issues will be referred to the Board. The decision as to whether a transaction should be reviewed by the Board is left to the discretion and expertise of staff. Failure to refer a matter to the Board would not provide a basis for challenging the final staff action.

The Board has determined to add a fourth criterion which would exclude from eligibility for approval by the Principal Supervisory Agent, any application by a company which declines to agree in advance to maintain the net worth of the target institution and not to cause the insured institution to declare dividends in excess of 50 percent of net income per year unless waived by the Supervisory Agent. These provisions currently are included in the Board's standards for delegated approval of Holding Company Act acquisition applications at 12 CFR 584.4(g)(1) (i) and (ii). In the case of an acquisition by a company, the Board believes that a holding company should serve as a source of strength to its subsidiary insured institution. *See Kaneb Services, Inc. v. Federal Savings and Loan Insurance Corporation*, 650 F.2d 78 (5th Cir. 1981).

As prevously discussed, the requirement of the net worth maintenance agreement was proposed to be included in the regulations as a presumptive disqualifier. One commenter suggested that it would be unfair to require a company that owned only 10 percent of a class of voting stock of an institution to be liable for 100 percent of the institution's losses. While the Board believes that any company that has the power to direct the management or policies of an insured institution should be responsible for the performance of such institution, it is aware that such a requirement may hamper investments in the industry. Accordingly, the Board also has provided the Principal Supervisory Agent with authority to approve an acquisition of less than 50 percent of the voting stock of an insured institution upon a stipulation by such company that it will maintain its *pro rata* share of the institution's regulatory net worth requirement. It should be noted that a company which is deemed to control an insured institution on the basis of concerted action with individuals would be required to sign an agreement, but the individuals would not, although the company's net worth maintenance would be calculated with reference to the stock held by the company and those with whom it was deemed to act in concert. All parties to the agreement which results in a similar organization, as defined in § 574.2(l), would be liable in connection with the net worth maintenance agreement.

The Board also has given the Principal Supervisory Agent the authority to deny any application or disapprove any notice which the Principal Supervisory Agent has the authority to approve. Denials of applications and notices by the Principal Supervisory Agent may be appealed to the Corporation. A request for Corporation review of a denial would be required to be submitted to the Secretary to the Board, with copies addressed to the attention of the Director, Office of Examinations and Supervision, and to the General Counsel. The request for review must identify the party seeking review and specifically describe the action taken of which review is sought and the reasons why the denial by the Principal Supervisory Agent is believed to be erroneous, and would be required to be submitted within 20 days of the date of the action taken for which review is sought.

In order to facilitate the review process, the Principal Supervisory Agent also would have the authority to take action with regard to publication of notice, deeming filings to be sufficient or requiring additional information with respect to any notice or application which he has the authority to approve. Finally, as an additional step to expedite the approval process, the regulation delegates to the Principal Supervisory Agent the authority to waive the requirement for certain audited financial statements for an acquiror's proprietary interests in connection with filings under the Control Act, provided that specified substitute information is submitted instead. If such substitute information were not furnished, the Principal Supervisory Agent would not have delegated authority to waive the requirement. In this regard, difficulties have often arisen with respect to financial statements for sole proprietors and closely held companies. Generally, certain substitute information has been considered acceptable. This information has included, with respect to each acquiring person or company, a statement as to the percentage of his or her net worth that the acquisition represents, the percentage of net worth, assets and income attributable to proprietary interests, and such alternative financial statements regarding proprietary interests as are available. In the past, the Board has allowed the submission of tax returns and unaudited financial statements for proprietary interests which amounted to less than 10 percent of an individual's net worth, income or total assets, when the preparation of audited financial statements would prove a hardship. The Board wishes to emphasize that this waiver pertains to financial statements for an acquiror's *proprietary interests*, not to the statements of the acquiror's assets and liabilities and income and source of funds which are specifically required to be furnished by the Control Act. 12 U.S.C. 1730(q)(6)(B).

C. Authority of Washington Staff

The Board's Washington staff is delegated authority to take any action with regard to applications or notices which are not delegable to the PSA except that the staff in its discretion may refer to the Board those transactions that raise a significant issue of law or policy and those involving non-standard net worth maintenance or dividend conditions. The Washington staff has not, however, been given denial authority in the review of applications and notices, but has been authorized to make a determination regarding rebuttals of control determinations or concerted action presumptions. One commenter suggested that this function be delegated to the PSA. The Board believes that due to the novelty of the procedure, uniformity will be preserved by having all rebuttal determinations made in Washington, for the time being.

Finally, the Board wishes to take this opportunity to emphasize that the fact that an acquisition is contested does not, alone, cause it to be a matter that should be referred to the Board. The Board specifically intends to rely on the discretion and expertise of its staff to keep the Board informed and to refer applications or notices to the Board where unresolved legal or policy issues are present, which may, but need not, include contested matters. There is no process or procedure for petitioning the Board to cause the Board to take up such matters directly, and the Board does not intend to entertain such petitions. The Board believes that the portions of the rule adopted today concerning delegations fully address the issues that may arise and intends that these provisions be followed in all cases. Moreover, the Board believes that it would unfairly tilt and delay the acquisition process if all contested acquisitions were required to be decided by the Board alone.

D. Sole Authority in the Board

The Board has retained sole authority to approve or deny any application or notice which has been referred to the Board as presenting significant issues of policy or law, and applications or notices presenting non-standard net worth maintenance or dividend conditions.

The Board has also reserved sole authority in the Corporation to assess monetary penalties under the statutes. Finally, in order to insure the efficient use of time in the review period of a Control Act notice, the Board has reserved for itself the authority to recommence a review period under the Control Act after a determination of sufficiency has been made, or in cases where the acquiror has not furnished all the information required or where any material information furnished is substantially inaccurate.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives and legal bases underlying the final rules.* These elements have been discussed elsewhere in the **"SUPPLEMENTARY INFORMATION"** regarding the rule.

2. *Small entities to which the rules apply.* The rule will apply to all acquirors of insured institutions.

3. *Impact of the rules on small institutions.* This has been discussed elsewhere in the **"SUPPLEMENTARY INFORMATION."**

4. *Overlapping or conflicting federal rules.* These are not federal rules which duplicate, overlap, or conflict with the rules.

5. *Description of reporting and recordkeeping requirements.* Discussed elsewhere.

List of Subjects in 12 CFR Parts 563, 574, 584 and 589

Securities, Savings and loan associations, Savings and loan holding companies.

Accordingly, the Board hereby amends Part 563 and adds Part 574 to Subchapter D, and amends Parts 584 and 589 of Subchapter F, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURED CORPORATION

PART 563—OPERATIONS

1. The authority for Part 563 continues to read as follows:

Authority: Secs. 401–405, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1949 Comp., p. 1071, unless otherwise noted.

§ 563.18-2 [Removed]

2. Remove § 563.18–2.

§ 563.18-3 [Amended]

3. Amend § 563.18–3 by removing paragraph (c) and redesignating paragraphs (d), (e) and (f) as paragraphs (c), (d) and (e), respectively; and by amending newly redesignated paragraph (c)(1) by substituting the phrase "this § 563.18–3" for the phrase "paragraphs (b) or (c) of this section".

4. Add a new Part 574 as follows:

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

Sec.
574.1 Scope of part.
574.2 Definitions.
574.3 Acquisition of control of insured institutions.
574.4 Control.
574.5 Certifications of ownership and other reports.
574.6 Procedural requirements.
574.7 Determination by the Corporation.
574.8 Delegations of authority.

Authority: 12 U.S.C. 1730(q); 12 U.S.C. 1730a(e).

§ 574.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) ("Control Act") and the Savings and Loan Holding Company Act, 12 U.S.C. 1730a ("Holding Company Act"), relating to acquisitions and changes in control of insured institutions that are organized in stock form and holding companies thereof.

§ 574.2 Definitions.

As used in this Part and in the forms under this Part, the following definitions apply, unless the context otherwise requires:

(a) "Acquire" when used in connection with the acquisition of stock of an insured institution means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession, or other means, including:

(1) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(2) the acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon information of such group. *Provided,* that an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor (i) votes the stock only upon instruction from the beneficial owner, and (ii) does not provide the beneficial owner with advice concerning the voting of such stock.

(b) "Acquiror" means a person or company.

(c) "Acting in concert" means:

(1) Knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement, or

(2) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) action in concert with a person or company which shall also be deemed to be action in concert with any person or company that is acting in concert with such other person or company.

(d) "Affiliate" means any person or company which controls, is controlled by or is under common control with a person, insured institution or company.

(e) "Company" means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (*1*); but a company does not include:

(1) The Federal Savings and Loan Insurance Corporation, or

(2) any company the majority of shares of which is owned by: (i) The United States or any State, (ii) an officer of the United States or any State in his official capacity, or (iii) an instrumentality of the United States or any State.

(f) "Controlling shareholder" means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(g) "Immediate family" means a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister.

(h) "Insured institution" means a Federal association, Federal savings bank, interim Federal association, building and loan, savings and loan, or homestead association or a cooperative bank, or an interim state savings and loan association, the accounts of which are insured by the Corporation; any Federal association or Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation; an institution that retains insurance of accounts by the Corporation pursuant to § 563.29–1 of this chapter; and any savings and loan holding company as defined in paragraph (k) of this section.

(i) "Management official" means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for an insured institution or a company, whether or not incorporated.

(j) "Person" means an individual or a group of individuals acting in concert who do not constitute a "company" as defined in paragraph (e) of this section.

(k) "Savings and loan holding company" means any company that directly or indirectly controls an insured institution, but does not include:

(1) Any company by virtue of its ownership or control of voting stock of an insured institution acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Corporation) as will permit the sale thereof on a reasonable basis; and

(2) Any trust (other than a person, profit-sharing, stockholders' voting or business trust) which controls an insured institution if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and: (i) Was in existence and in control of an insured institution on June 26, 1967, or (ii) is a testamentary trust.

(l) "Similar organization" for purposes of paragraph (e) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(1) The transferability and voting of any stock or other indicia of participation in another entity, or

(2) Achievement of a common or shared objective, such as to manage or control another entity.

(m) "Stock" means common or preferred stock.

(n) (1) "Voting stock" means common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interests, by statute, charter or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing insured institution or company);

(ii) To vote or to direct the conduct of the operations or other significant policies of the issuer:

(2) Notwithstanding anything in paragraph (n)(1) of this section, preferred stock, limited partnership shares or interests, or similar interests are not "voting stock" if: (1) Voting rights associated with the stock, shares or interests are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the stock, security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the stock, security or interest, the dissolution of the issuer, or the payment of dividends by the issuer when preferred dividends are in arrears; (ii) the stock, shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuer; and (iii) the stock, shares or interests do not at the time entitle the holder, by statute, charter, or otherwise, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuer;

(3) Notwithstanding anything in paragraph (n) (1) and (2) of this section, "voting stock" shall be deemed to include stock and other securities that, upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately, convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock into which they are convertible; other convertible securities and rights to acquire voting stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than 50 percent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock. For purposes of calculating the percentage of voting stock held by a particular acquiror, stock or other securities convertible into voting stock or exercisable to acquire voting stock which are deemed voting stock under this paragraph (n)(3) shall be included in calculating the amount of voting stock held by the acquiror and the total amount of stock outstanding only to the extent of the voting stock obtainable by such acquiror by such conversion or exercise of rights.

§ 574.3 Acquisition of control of insured institutions.

(a) *Acquisition by a company.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior approval under paragraph (d) of this section, no company shall acquire control, as defined in § 574.4 (a) and (b) of this Part, of an insured institution except upon receipt of the written approval of the Corporation or its designee.

(b) *Acquisition by a person.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior notice under paragraph (d) of this section, no person shall acquire control, as defined in § 574.4 (a) and (b) of this Part, of an insured institution until written notice has been provided to the Corporation and (1) the Corporation indicates in writing its intent not to disapprove the proposed acquisition or (2) 60 days (or such period of time as the Corporation may specify if the review period has been extended under § 574.6(c)(3) of this Part) have passed since receipt of a notice deemed sufficient under § 574.6(c)(2).

(c) *Exempt transactions.*

(1) The following transactions are exempt from the application requirements of paragraph (a) of this section:

(i) Control of an insured institution acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company under § 574.2(k) of this Part;

(ii) Control of an insured institution acquired in connection with a reorganization which involves solely the acquisition of control of that institution by a newly formed company which is controlled by the same acquirors that controlled the insured institution for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company: *Provided,* that the acquirors have filed an H-(e)4 notification as provided in § 574.6 of this Part and the General Counsel or his delegate does not object to the acquisition within 30 days of the filing date;

(iii) Control of an insured institution acquired solely as a result of (A) a pledge or hypothecation of stock to secure a loan contracted for in good faith or (B) the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: *Provided,* that acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the Corporation within 30 days, and *Provided further,* that the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the Corporation may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the Corporation finds such extension is warranted and would not be detrimental to the public interest;

(iv) Control of an insured institution acquired through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(v) Acquisition of additional stock after approval under § 574.7 of this Part, or any predecessor provision, has been received, *Provided* that such acquisition is consistent with any conditions imposed in connection with such approval and with the representations made by the acquiror in its application.

(2) The following transactions are exempt from the notice requirements of paragraph (b) of this section:

(i) Transactions which are exempt pursuant to paragraph (c)(1) (iii), (iv) and (v) of this section;

(ii) Transactions for which approval is required under paragraph (a) of this section;

(iii) Transactions for which approval is required under §§ 546, 552.13 or 563.22 of this Chapter: *Provided,* that no acquiror who currently does not control an insured institution would acquire control of any insured institution as a result of such transaction;

(iv) Acquisition of additional stock of an insured institution by any person who:

(A) Has held power to vote 25 percent or more of any class of voting stock in such institution continuously since March 9, 1979;

(B) Has maintained control of the insured institution continuously since acquiring control in compliance with the Control Act and the Corporation's regulations thereunder then in effect: *Provided,* that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its notice.

(3) An acquiror that would be considered to be in control of an insured institution pursuant to § 574.4 of this Part on December 26, 1985, shall not be subject to this § 574.3 unless the acquiror acquires additional stock of the insured institution or obtains a control factor with respect to such institution after December 26, 1985. *Provided,* that an acquiror shall not be deemed to have acquired control of an insured institution on the basis of actions taken prior to December 26, 1985, or on the basis of actions taken after December 26, 1985, if such actions are pursuant to and consistent with a materially complete application under the Holding Company Act or notice under the Control Act filed prior to December 26, 1985, if such acquisition is made pursuant to an application approved under the Holding Company Act or a notice under the Control Act that was not disapproved.

(d) *Transactions exempt from prior approval or notice.*

(1) Subject to the conditions set forth in paragraph (d)(2) of this section, the following transactions are exempt from prior approval and prior notice under § 574.3: *Provided,* that the timing of the transaction was not within the control of the acquiror.

(i) Control of an insured institution acquired through *bona fide* gift;

(ii) Control of an insured institution acquired through liquidation of a loan contracted in good faith where the loan was not made in the ordinary course of business of the lender;

(iii) Control of an insured institution acquired through a percentage increase in ownership following a stock split or redemption that was not *pro rata;*

(iv) Control determined pursuant to § 574.4 (a) or (b) as a result of actions by third parties that are not within the control of the acquiror;

(v) Control of an insured institution acquired through testate or intestate succession, *Provided,* that the acquiror transmits written notification of the acquisition to the Corporation within 60 days of the acquisition and provides such additional information as the Corporation may specifically request.

(2) The exemptions provided by paragraphs (d)(1)(i) through (d)(1)(iv) of this section are subject to the following conditions:

(i) The acquiror shall file an application, notice or rebuttal, as appropriate, with the Corporation within 90 days of acquisition of control;

(ii) The acquiror shall not take any action to direct the management or policies of the insured institution or which are designed to effect a change in the business plan of the insured institution other than voting on matters that may be presented to stockholders by management of the insured institution until the Corporation has acted favorably upon the acquiror's application or notice, and the Corporation may require that the acquiror take such steps as the Corporation deems necessary to insure that control is not exercised; and

(iii) If the Corporation disapproves the acquiror's application or notice, the acquiror shall divest such portion of the stock held by the acquiror so as to cause the acquiror not to be determined to be in control of the insured institution under § 574.4 of this Part, within one year or such shorter period of time and in the manner that the Corporation may order.

(e) *Prohibited acquisitions.* No acquisition shall be approved by the Corporation, other than an acquisition authorized pursuant to 12 U.S.C. § 1730a(m) or specific order of the Board in a supervisory case, which would:

(1) Result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling insured institutions in more than one state where the acquisition causes an insured institution to become an affiliate of another insured institution with which it was not previously affiliated;

(2) Enable an existing multiple savings and loan holding company to acquire an insured institution the principal office of which is located in a State other than the State which such savings and loan holding company has designated pursuant to paragraph (e) of § 584.1 of this Chapter.

§ 574.4 Control.

(a) *Conclusive control.*

(1) An acquiror shall be deemed to have acquired control of an insured institution, other than a savings and loan holding company, if the acquiror directly or indirectly, through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the insured institution;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the insured institution;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of an insured institution; or

(iv) Controls in any manner the election of a majority of the directors of the insured institution.

(2) An acquiror shall be deemed to have acquired control of a company, including a savings and loan holding company, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the company;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the company;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of an insured institution;

(iv) Controls in any manner the election of a majority of the directors or trustees of a company;

(v) Is a general partner of a company;

(vi) Has contributed more than 25 percent of the capital of the company; or

(vii) Is a trustee of a trust.

(3) A company shall be deemed to control an insured institution if the Corporation finds, after notice and opportunity for hearing, that the company has the power directly or indirectly, to exercise a controlling influence over the management or policies of the insured institution.

(4) A person shall be deemed to control an insured institution if the Corporation determines that such person has the power to direct the management or policies of the insured institution.

(b) *Rebuttable control determinations.*

(1) An acquiror shall be determined, subject to rebuttal, to have acquired control of an insured institution, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 10 percent of any class of voting stock of the insured institution and is subject to any control factor, as defined in paragraph (c) of this section;

(ii) Acquires more than 25 percent of any class of stock of the insured institution and is subject to any control factor, as defined in paragraph (c) of this section.

(2) An acquiror shall be determined, subject to rebuttal, to have acquired control of an insured institution, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, holds any combination of voting stock and revocable and/or irrevocable proxies, representing more than 25 percent of any class of voting stock of an insured institution, excluding such proxies held in connection with a solicitation by, or in opposition to, a solicitation on behalf of management of the insured institution, but including a solicitation in connection with an election of directors, and such proxies would enable the acquiror to:

(i) Elect one-third or more of the insured institution's board of directors, including nominees or representatives of the acquiror currently serving on such board;

(ii) Cause the insured institution's stockholders to approve the acquisition or corporate reorganization of the insured institution; or

(iii) Exert a continuing influence on a material aspect of the business operations of the insured institution.

(c) *Control factors.* For purposes of paragraph (b)(1) of this section, the following constitute control factors. References to the acquiror include actions taken directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(1) The acquiror would be one of the two largest holders of any class of voting stock of the insured institution.

(2) The acquiror would hold more than 25 percent of the total stockholders' equity of the insured institution.

(3) The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the insured institution.

(4) The acquiror is party to any agreement (i) pursuant to which the acquiror possesses a material economic stake in the insured institution resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the insured institution; or (ii) that enables the acquiror to influence a material aspect of the management or policies of the insured institution, other than agreements to which the insured institution is a party where the restrictions are customary under the circumstances and in the case of an acquisition agreement, which apply only during the period when the acquiror is seeking Corporation approval to acquire the insured institution, the agreement prohibits transactions between the acquiror and the insured institution and their respective affiliates without Supervisory Agent approval during the pendency of the application process, and the agreement contains no material forfeiture provisions applicable to the insured institution in the event the acquisition is not approved or not approved by a specified date.

(5) The acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the insured institution's voting stock or to vote more than 25 percent of a class of the insured institution's voting stock in

the future upon the occurrence of a future event.

(6) The acquiror would have the power to direct the disposition of more than 25 percent of a class of the insured institution's voting stock in a manner other than a widely dispersed or public offering.

(7) The acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the insured institution's board of directors.

(8) The acquiror or a nominee or management official of the acquiror would serve as the chairman of the board of directors, chairman of the executive committee, chief executive officier, chief operating officer, chief financial officer or in any position with similar policymaking authority in the insured institution.

(d) *Rebuttable presumptions of concerted action.* An acquiror will be presumed to be acting in concert with the following persons and companies:

(1) A company will be presumed to be acting in concert with a controlling shareholder, partner, trustee or management official of such company with respect to the acquisition of stock of an insured institution, if

(i) Both the company and the person own stock in the insured institution,

(ii) The company provides credit to the person to purchase the insured institution's stock, or

(iii) The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of the insured institution;

(2) A person will be presumed to be acting in concert with members of the person's immediate family;

(3) Persons will be presumed to be acting in concert with each other where (i) both own stock in an insured institution and both are also management officials, controlling shareholders, partners, or trustees of another company; or (ii) one person provides credit to another person or is instrumental in obtaining financing for another person to purchase stock of the insured institution;

(4) A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert;

(5) Persons or companies will be presumed to be acting in concert where they constitute a group under the beneficial ownership reporting rules under section 13 or the proxy rules under section 14 of the Securities Exchange Act of 1934, promulgated by the securities and Exchange Commission.

(6) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee.

(7) Persons or companies will be presumed to be acting in concert with each other and with any other person or company with which they also are presumed to act in concert.

(e) *Procedures for rebuttal.*—(1) *Rebuttal of control determination.* An acquiror attempting to rebut a determination of control that would arise under paragraph (b) of this section shall file a submission with the Corporation setting forth the facts and circumstances which support the acquiror's contention that no control relationship would exist if the acquiror acquires stock or obtains a control factor with respect to an insured institution. The rebuttal must be filed and accepted in accordance with this section before the acquiror acquires such stock or control factor.

(i) An acquiror seeking to rebut the determination of control arising under paragraph (b)(1) of this section shall submit to the Corporation an agreement setting forth the undertakings specified in paragraphs (e)(1)(i) (A) through (F) of this section. Unless agreed to by the Corporation or its delegate in writing, no undertaking shall be deemed to rebut the determination of control arising under paragraph (b)(1) of this section. In the case of a rebuttal of a presumption of control arising under paragraph (b)(1), such agreement shall be in form and content satisfactory to the Corporation, executed by the acquiror and to be executed on behalf of the Corporation, and shall specifically state that violation of the terms of the agreement shall be subject to such penalties, remedies and procedures as are provided for violations, willful or otherwise, of agreements with the Corporation and violations of the Holding Company Act or the Control Act, as applicable, and undertake that the acquiror and its nominees and affiliates will not:

(A) Seek or accept representation of more than one member on the insured institution's board of directors;

(B) Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of the insured institution's board of directors, or as president or chief executive officer of the insured institution;

(C) Engage in any inter-company transactions with the insured institution or its affiliates;

(D) Propose directors in opposition to nominees proposed by management for the insured institution's board of directors other than as permitted in paragraph (A) above;

(E) Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the insured institution's stockholders other than in support of, or in opposition to, a solicitation conducted on behalf of management of the institution;

(F) Do any of the following, except as necessary solely in connection with performance of duties as a member of the insured institution's board of directors:

(*1*) Influence or attempt to influence in any respect the loan or the credit decisions or policies of the insured institution, the pricing of services, any personnel decisions, the location of any offices, branching, or similar activities of the insured institution;

(*2*) Influence or attempt to influence the insured institution's dividend policies and practices or any decisions or policies of the insured institution as to the issuance, offering or exchange of any securities;

(*3*) Seek to amend, or otherwise take action to change, the insured institution's bylaws, articles of incorporation, or charter;

(*4*) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the insured institution's management policies or business operations; or

(*5*) Seek or accept access to any non-public information concerning the insured institution.

(ii) An acquiror seeking to rebut the determination of control with respect to holding of proxies arising under paragraph (b)(2) of this section shall be subject to the requirements of paragraph (e)(1) of this section, except that in the case of a rebuttal of the presumption of control arising under paragraph (b)(2) of this section, the Corporation may require the acquiror to furnish information in response to a specific request for information and depending upon the particular facts and circumstances, to provide a rebuttal agreement containing the undertakings specified in paragraph (e)(1)(i) of this section, with any modifications to paragraphs (e)(1)(i) (A) through (F) deemed necessary by the Corporation or its delegate.

(2) *Presumptions of concerted action.* An acquiror attempting to rebut the presumption of concerted action arising under paragraph (d) of this section shall file a submission with the Corporation setting forth facts and circumstances which clearly and convincingly demonstrate the acquiror's contention that no action in concert exists. Such a statement must be accompanied by an affidavit, in form and content

satisfactory to the Corporation, executed by each person or company presumed to be acting in concert, stating that such person or company does not and shall not, without having made necessary filings and obtained approval or clearance thereof under the Savings and Loan Holding Company Act or the Change in Savings and Loan Control Act, as applicable, have any agreements or understandings, written or tacit, with respect to the exercise of control, directly or indirectly, over the management or policies of the insured institution, including agreements relating to voting, acquisition or disposition of the insured institution's stock. The affidavit shall also recite that the signatory is aware that the filing of a false affidavit may subject the person or company to criminal sanctions, would constitute a violation of the Corporation's regulations at 12 CFR 563.18(b), and would be considered a "presumptive disqualifier" under 12 CFR 574.7(g)(1)(v).

(3) *Determination.* Within 20 calendar days of the date of filing of a complete rebuttal submission, the Office of Examinations and Supervision, with the concurrence of the Office of General Counsel, will provide notification of its determination to accept the submission: *Provided,* that the acquiror has sought to rebut the determination of control through the undertakings specified in this section. If such 20-day period has elapsed without a determination not to accept the submission, the rebuttal submission shall be deemed to be accepted. The Corporation and its delegates are not required to accept any rebuttal which is inconsistent with facts and circumstances known to them, or where the rebuttal does not clearly and convincingly refute the presumption of action in concert, and may determine not to accept a submission solely on such bases.

(f) *Safe harbor.* Notwithstanding any other provision of this section, where an acquiror has no intention to participate in or to seek to exercise control over an insured institution's management or policies, the acquiror may seek to qualify for a safe harbor with respect to its ownership of stock of an insured institution.

(1) In order to qualify for the safe harbor, an acquiror must submit a certification, which shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned makes this submission pursuant to § 574.4(f) of the regulations of the Federal Home Loan Bank Board ("Board") with respect to [name of insured institution] and hereby certifies to the Board the following:

The undersigned is not in control of [name of insured institution] under § 574.4(a);

The undersigned is not subject to any control factor as enumerated in § 574.4(c) with respect to the [name of insured institution];

The undersigned will not solicit proxies relating to the voting stock of [name of insured institution];

Before any change in status occurs that would bring the undersigned within the scope of § 574.4 (a) or (b), the undersigned will file and obtain approval of a rebuttal, notice or application, as appropriate.

The undersigned has not acquired stock of [name of insured institution] for the purpose or effect of changing or influencing the control of [name of insured institution] or in connection with or as a participant in any transaction having such purpose or effect.

(2) An acquiror claiming safe-harbor status may vote freely and dissent with respect to its own stock. Certifications provided for in this paragraph shall be submitted to the Corporation in accordance with § 574.6(b)(6) of this Part.

§ 574.5 Certifications of ownership and other reports.

(a) *Acquisition of stock.*

(1) Upon the acquisition of beneficial ownership which exceeds, in the aggregate, 10 percent or more of any class stock of an insured institution or additional stock above 10 percent of the stock of an insured institution occurring after December 26, 1985, an acquiror shall file in accordance with § 574.6(b)(7) of this Part a certification with the Corporation as described in this section.

(2) The certification filed pursuant to this section shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

"The undersigned is the beneficial owner of 10 percent or more of a class of stock of [name of insured institution or holding company]. The undersigned is not in control of such institution, as defined in 12 CFR § 574.4(a), and is not subject to a rebuttable determination of control under § 574.4(b), and will take no action that would result in a determination of control or a rebuttable determination of control without first filing and obtaining approval of an application under the Savings and Loan Holding Company Act or notice under the Change in Savings and Loan Control Act or filing and obtaining acceptance by the Corporation of a rebuttal of the rebuttable determination of control."

(3) Notwithstanding anything contained in this paragraph (a), an acquiror is not required to file a certification if (i) the Board has approved the acquisition of the insured institution or (ii) the acquiror has filed a materially complete application or notice pursuant to § 574.3 of this Part.

(b) *Reports of loans secured by voting stock.* Whenever an insured institution, or a bank which has accounts insured by the Federal Deposit Insurance Corporation, makes a loan, or loans, secured (or to be secured) by 25 percent or more of the outstanding voting stock of an insured institution, unless the borrower has been the owner of record of such stock for a period of one year or more or the stock is of a newly organized institution prior to its opening, a report shall be filed with the Corporation by the president or other chief executive officer of the lending institution containing the following information:

(1) The name of the borrower;

(2) The date and amount of the loan;

(3) The name of the insured institution which has issued or is to issue the stock securing the loan; and

(4) The number of shares securing the loan.

(c) *Privacy.* All reports and certifications filed under this § 574.5 shall be for the information of the Corporation in connection with its examination functions and shall be provided confidential treatment by the Corporation.

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application or notice required by § 574.3 of this Part shall be filed in the form prescribed by the Corporation as provided in this section. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of § 574.6(f) of this Part.

(1) *H-(e)1.* This application shall be used for all applications filed under § 574.3(a) by a company, other than a savings and loan holding company, for approval of an acquisition of one insured institution.

(2) *H-(e)2.* This application shall be used for all applications filed under § 574.3(a) for approval of acquisitions of: (i) one or more insured institutions by a savings and loan holding company or (ii) more than one insured institution by any other company.

(3) *H-(e)3.* This application shall be used for all applications filed under § 574.3(a): (i) by a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of an insured or uninsured institution or a savings and loan holding company, or (ii) by any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more insured

institutions, and shall be used also for approval under §§ 563.22 and 571.5 of this Chapter.

(4) *H-(e)4.* This information filing shall be used to claim that a reorganization is exempt from prior written approval of the Corporation under § 574.3 (c)(1)(ii).

(5) *Notice Form 1173, Parts A and B.* This form shall be used for all notices filed under § 574.3(b) regarding the acquisition of control of an insured institution by any person or persons not constituting a company.

(b) *Filing requirements.*—(1) *Applications.* Any application required or provided for by a company shall be filed with the Corporation as follows: Where an application is not eligible to be processed under delegated authority under § 574.8(a), the company shall transmit three complete copies including exhibits and other pertinent papers and documents to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with one copy indicated "Attention: Secretariat, Records Copy," a second copy indicated "Attention: Office of Examinations and Supervision," and a third copy indicated "Attention: Office of General Counsel, Corporate and Securities Division," and shall transmit a fourth complete copy including exhibits and other pertinent papers and documents to the Principal Supervisory Agent of the district in which the insured institution or institutions involved in the acquisitions have their home offices. At least one copy of the application filed with each noted office shall be manually signed. Unsigned copies shall be conformed. Where a company believes its application is eligible to be processed under delegated authority under § 574.8(a), the company shall file only two copies with the Secretariat, with one copy indicated "Attention: Secretariat, Records Copy," and a second copy indicated "Attention: Office of Examinations and Supervision," and shall transmit two copies with the Principal Supervisory Agent and shall also transmit, together with all copies of its application, a brief summary of the proposed transaction including a statement as to why the company asserts the application may be processed under delegated authority, including an affirmative statement that none of the factors specified in § 574.8(a)(1) which would preclude action under delegated authority are present. Such statement shall be clearly labeled "Statement Regarding Eligibility for Processing Under Delegated Authority." If the company subsequently becomes aware of additional information or changed circumstances which would alter the eligibility of the application for processing under delegated authority, the company shall promptly so advise the Principal Supervisory Agent in writing. An applicant shall also comply with section 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (Parts 801, 802, and 803 of title 16 of the Code of Federal Regulations).

(2) *H-(e)4. Information filing.* Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the Corporation under § 574.3(c)(1)(ii) shall be filed with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with one copy indicated "Attention: Secretariat, Records Copy," a second copy indicated "Attention: Office of General Counsel, Corporate and Securities Division," and a third copy filed with the appropriate Principal Supervisory Agent for the institution to be acquired. Such a filing shall be clearly labeled "H-(e)4 Information Filing."

(3) *Notice.* Any notice required to be filed by a person or persons shall be filed with the Corporation as follows: Where a notice is not eligible to be processed under delegated authority pursuant to § 574.8(a), the person shall transmit three complete copies of the notice, including exhibits and other pertinent papers and documents, to be filed with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with one copy indicated "Attention: Secretariat, Records Copy," a second copy indicated "Attention: Office of Examinations and Supervision," and a third copy indicated "Attention: Office of General Counsel, Corporate and Securities Division," and shall transmit a fourth complete copy of the application and exhibits filed with the appropriate Principal Supervisory Agent.

At least one copy of the notice filed with each noted office shall be manually signed. Where a person believes his notice is eligible to be processed under delegated authority under § 574.8(a), the person shall file only two copies with the Secretariat, with one copy indicated "Attention: Secretariat, Records Copy," and a second copy indicated "Attention: Office of Examinations and Supervision," and shall transmit two copies to the Principal Supervisory Agent and shall also transmit, together with all copies of his notice, a brief summary of the proposed transaction including a statement as to why the person asserts the notice may be processed under delegated authority, including an affirmative statement that none of the factors specified in § 574.8(a)(1) which would preclude action under delegated authority are present. Such statement shall be clearly labelled "Statement Regarding Eligibility for Processing Under Delegated Authority." If the person subsequently becomes aware of additional information or changed circumstances which would alter the eligibility of the notice for processing under delegated authority, the person shall promptly so advise the Principal Supervisory Agent in writing. In addition, in the case of a notice not delegated to the Principal Supervisory Agent under § 574.8(a), an acquiror filing a notice of the acquisition of a state-chartered institution shall file an additional copy with the Office of Secretariat indicated "Attention: Office of Examinations and Supervision/State Supervisor Copy." Where such a notice may be processed under delegated authority under § 574.8(a), the extra copy shall be filed with the Principal Supervisory Agent, indicated, "State Supervisor Copy."

(4) *Amendment.* Any acquiror may amend an application or notice or file additional supporting information upon request of the Supervisory Agent or the Corporation or upon its own initiative.

(5) *Rebuttal filing.* In order to apply to rebut a determination or presumption pursuant to § 574.4(e) of this Part, three copies, one of which shall be manually signed, shall be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, with one copy indicated "Attention: Secretariat, Records Copy," a second copy indicated "Attention: Office of Examinations and Supervision," and a third copy indicated "Attention: Office of General Counsel, Corporate and Securities Division," and one copy shall be transmitted to the appropriate Principal Supervisory Agent.

(6) *Safe-harbor filing.* In order to qualify for the safe harbor under § 574.4(f), a certification must be filed setting forth the information required by § 574.4(f). Three copies, one of which shall be manually signed, shall be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, with one copy indicated "Attention: Secretariat, Records Copy," a second copy indicated "Attention: Office of General Counsel, Corporate and Securities Division" and a third copy indicated "Attention: Office of Examinations and Supervision", and one copy shall be transmitted to the appropriate Principal Supervisory Agent.

(7) *Certification.* Certifications required by § 574.5(a) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(6) of this section.

(8) *Reports of loans.* Reports of loans required by § 574.5(b) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(6) of this section.

(9) *Reports on pledges, hypothecations and liquidations.* Reports of pledges, hypothecations and liquidation transactions required by § 574.3(c)(1)(iii) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(6) of this section.

(c) *Sufficiency and waiver.*

(1) An application or notice filed pursuant to §§ 574.3(a) or 574.3(b) shall not be deemed sufficient unless it includes all of the information required by the form prescribed by the Corporation and this Part, including a complete description of the acquiror's proposed plan for acquisition of control whether pursuant to one or more transactions, and any additional relevant information as the Corporation may require by written request to the applicant. Unless an application or notice specifically indicates otherwise, the application or notice shall be considered to pertain to acquisition of 100 percent of an insured institution's voting stock. Where an application or notice pertains to a lesser amount of stock, the Corporation may condition its approval or non-disapproval to apply only to such amount, in which case additional acquisitions may be made only by amendment to the acquiror's application or notice and Corporation approval or non-disapproval thereof. Failure by an applicant to respond completely to a written request by the Corporation or its delegate for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or notice, or may be treated as grounds for denial of an application or issuance of a notice of disapproval of a notice.

(2) The period for Corporation review of any proposed acquisition will commence upon receipt by the Corporation of a notice or application deemed sufficient under paragraph (c)(1) of this section. The Corporation shall notify an acquiror within 10 business days after the close of the public comment period specified in paragraph (e) of this section as to whether an application or notice is deemed sufficient. The Corporation also shall notify an acquiror within 10 business days after the timely filing of any additional information furnished in response to a specific request by the Corporation as to whether the application or notice is thereby deemed to be sufficient. If the Corporation fails to notify an acquiror within such times, the application or notice shall be deemed to be sufficient as of the expiration of such 10 day period, except that where an acquiror requests a waiver of required information, the application or notice shall not be deemed to be sufficient until the waiver is granted.

(3) After additional information has been requested and supplied, the Corporation may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the acquiror, was concealed, or pertains to developments subsequent to the time of the Corporation's initial request for additional information. With regard to information of a material nature that was not reasonably available from the acquiror or was concealed at the time a notice was deemed to be sufficient or which pertains to developments subsequent to the time a notice was deemed to be sufficient, the Corporation, at its option, may request such additional information as it considers necessary, or may deem the notice not to be sufficient until such additional information is furnished and cause the review period to commence again in its entirety upon receipt of such additional information.

(i) The 60-day period for Corporation review of a notice deemed to be sufficient also may be extended by the Corporation for up to 30 days.

(ii) The period for Corporation review of a notice may be further extended if the Corporation determines that any acquiring party has not furnished all of the information required by the Corporation or any material information submitted is substantially inaccurate.

(iii) In the case of an application or notice that is not eligible for processing under delegated authority by the Principal Supervisory Agent pursuant to § 574.8(a), actions by the PSA or his delegate shall not commence any of the periods described in this paragraph (c) for review.

(4) With respect to an H-(e)4 information filing, the General Counsel shall have 30 days after receipt of a filing deemed sufficient to disapprove the assertion that the company qualifies for the exemption provided in § 574.3(c)(1)(ii). After the expiration of such 30-day period without response from the General Counsel, the filing shall be deemed to be approved.

(5) The Corporation may waive any requirements of this subsection determined to be unnecessary by the Corporation upon the written request of an acquiring person, or in a supervisory case.

(d) *Publication.* (1) An acquiror shall publish a notification as provided in this section within 10 calendar days after filing an application under § 574.3(a) or notice under § 574.3(b), and shall mail a copy of the notification to the institution whose stock is sought to be acquired. Publication shall be made in the business section of a newpaper printed in the English language in: (i) the community in which the home office of the insured institution is located; and (ii) if applicable, the community in which the home office of the largest subsidiary insured institution of the acquiror is located. If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the acquiror may be required to publish the notification simultaneously in the appropriate language(s).

(2) Notice published pursuant to this paragraph (d) shall be published in a manner that is conspicuous to the average reader and shall be made in substantially the following form:

Notice of Filing of Application or Notice for Acquisition of an Insured Institution

This is to inform the public that under § 574.3 of the Federal Home Loan Bank Board Regulations for Acquisitions of Insured Institutions [*Acquiror*] has filed an [application/notice] with the Federal Savings and Loan Insurance Corporation for permission to acquire control of [insured institution], located in [*location*], on [*date of filing*].

Anyone may write in favor of or protest against the application and in so doing may submit such information as he deems relevant. Copies of all submissions must be sent to the Principal Supervisory Agent, Federal Home Loan Bank of [give name and address] [and in the case of applications or notices not delegated to the Principal Supervisory Agent under § 574.8(a), three copies to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC, 20552, with one copy indicated "Attention: Secretariat Records Copy," a second copy indicated "Attention: Office of General Counsel, Corporate and Securities Division and a third copy indicated "Attention: Office of Examinations and Supervision"] within 20 calendar days of the publication of this notification. An additional 20 calendar days to submit comments may be obtained upon a showing of good cause if a written request is received by the Principal Supervisory Agent within the initial 20-day period.

You may inspect the non-confidential portion of the application/notice and non-confidential portions of all comments filed at the Federal Home Loan Bank of ——— [and

in the case of applications and notices not delegated to the Principal Supervisory Agent, by contacting the Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552.] If you have any questions concerning these procedures, contact the Federal Home Loan Bank of ———, at ( ) ———, [and the Information Services Section at (202) 477———].

(3) Promptly after publication, the acquiror shall transmit copies of each notice and a publisher's affidavit of publication to the Office of Examinations and Supervision and to the Principal Supervisory Agent of the district in which the insured institutions involved in the acquisition have their home offices. In addition, where an insured institution to be acquired (including a holding company thereof) has securities registered under the Securities Exchange Act of 1934, one copy of the notice also shall be transmitted to the Office of General Counsel, Corporate and Securities Division.

(4) Notice shall be provided to the appropriate state supervisor and to persons whose request for announcements under § 563e.6 of this subchapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (d)(1) of this section. Any other persons who might have an interest in the application or notice may also be notified.

(5) Disclosure of any part of an application or notice shall be made only in compliance with paragraph (f) of this section.

(e) *Public comment.* Comments by the public shall be submitted only as provided in this paragraph or as requested by the Corporation. Within 20 calendar days of the date of publication (or 40 calendar days after such date if an extension is requested in writing within the initial 20-day period), anyone may file comments in favor or in protest of the application or notice, and in so doing may submit such information as he deemed relevant. Comments received after the comment period, unverified accusations, or materials that the submitter is unwilling to have disclosed to the acquiror, shall not be part of the record and shall not be considered by the Corporation. Comments shall be filed in the manner and in the locations provided in paragraph (b) of this section for the application or notice to which the comments pertain.

(f) *Disclosure.* (1) Public disclosure shall be made of any portion of an application or notice, other filing or public comment made under this section for which confidential treatment is not requested in accordance with this paragraph, and shall be made of other portions of an application, notice, other filing or public comment in accordance with paragraph (f)(2) of this section, the provisions of the Freedom of Information Act (5 U.S.C. 552a) and Part 505 and 505a of this Chapter. Applicants and other submitters should provide confidential and non-confidential versions of their filings, as described in § 574.6(f)(2) and (3) in order to facilitate this process.

(2) Any person who submits any information or causes or permits any information to be submitted to the Corporation pursuant to this Part may request that the Corporation afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, (which shall include such information that would be deemed to result in the commencement of a tender offer under § 240.14d–2 of title 17 of the *Code of Federal Regulations*), or for any other reason permitted by Federal law. Such request for confidentiality must be made and justified in accordance with paragraph (f)(6) at the time of filing, and must, to the extent practicable, identify with specificity the information for which confidential treatment may be available and not merely indicate portions of documents or entire documents in which such information is contained. Failure to specifically identify information for which confidential treatment is requested may be a basis for denial of the request. In addition, the filing party should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Corporation (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which identifies with specificity the information as to which confidential treatment is requested. Any such request must be substantiated in accordance with paragraph (f)(6).

(3) All documents which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof shall be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating "Confidential Treatment Requested by [name]." If such marking is impracticable under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.

(4) A determination as to the validity of any request for confidential treatment may be made when request for disclosure of the information under the Freedom of Information Act is received, or at any time prior thereto. Five business days notice will be provided to the filing party if the Corporation receives a request for the information under the Freedom of Information Act and determines to disclose material for which confidential treatment has been requested.

(5) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iii) The existence and applicability of any prior determination by the Corporation, other Federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business' competitive position;

(v) The measures taken by the business to protect the confidentiality of the commercial or financial information in question and of similar information, prior to, and after, its submission to the Corporation;

(vi) The ease or difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether commercial or financial information was voluntarily submitted to the Corporation, and, if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Corporation;

(viii) The extent, if any, to which portions of the substantiation of the

request for confidential treatment should be afforded confidential treatment;

(ix) The amount of time after the consummation of the proposed acquisition for which the information should remain confidential and a justification thereof;

(x) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(g) *Supervisory cases.* The provisions of paragraphs (d), (e) and (f) of this section may be waived by the Corporation in connection with a transaction approved by the Corporation for supervisory reasons.

(h) *Notification of State supervisor.* Upon receiving a notice relating to the acquisition of control of a state-chartered insured institution, the Corporation shall forward a copy of the notice to the appropriate state savings and loan association supervisory agency, and shall allow 30 days within which the views and recommendations of such State supervisory agency may be submitted. The Corporation shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the Corporation determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the institution involved in the proposed acquisition, the Corporation may dispense with the requirement of this paragraph or, if a copy of the notice is forwarded to the State supervisory agency, the Corporation may request that the views and recommendations of such State supervisory agency be submitted immediately in any form or by any means acceptable to the Corporation.

§ 574.7 Determination by the corporation.

(a) *Acquisition by a company.* The Corporation shall approve an application by any company other than a savings and loan holding company to acquire control of one insured institution unless it determines that the criteria set forth in paragraph (c) of this section are not met.

(b) *Acquisition by a savings and loan holding company.* The Corporation shall not approve an acquisition by a savings and loan holding company to acquire control of an insured institution, or by any other company to acquire control of more than one insured institution, except in accordance with paragraph (c) of this section. Before approving any such acquisition, the Corporation or its delegate shall request from the Attorney General and consider any report rendered within 30 days of such request on the competitive factors involved.

(c) *Application criteria.* The Corporation may deny an application by a company to acquire an insured institution if the Corporation finds that the financial and managerial resources and future prospects of the company and institution involved would be detrimental to the institution or the insurance risk of the Corporation, or if the acquiror fails or refuses to furnish information requested by the Corporation or its delegate. In connection with applications filed pursuant to § 574.6(a)(2) and (3) of this Part, the Corporation will also consider the convenience and needs of the community to be served. Moreover, the Corporation shall not approve any proposed acquisition:

(1) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or

(2) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served.

(d) *Notice criteria.* In making its determination whether to disapprove a notice, the Corporation may disapprove any proposed acquisition, if the Corporation determines that:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(2) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of the acquiring person is such as might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institution;

(4) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the institution, the Corporation, or the public to permit such person to control the institution; or

(5) The acquiring person fails or refuses to furnish information requested by the Corporation or its delegate.

(e) *Failure to disapprove a notice.* If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to § 574.6(c), or extension thereof, the Corporation has failed to disapprove a proposed acquisition may take place: *Provided,* that it is consummated within one year and in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) *Disapproval of a notice.* Within three business days after its decision to disapprove a notice, the Corporation or its delegate shall notify the acquiror in writing of the disapproval. Such notification shall include a statement of the grounds therefor and a statement that the acquiror within 20 days of the receipt of such notice of disapproval may, if the disapproval was issued by the Principal Supervisory Agent pursuant to delegated authority, request review of such disapproval by the Corporation pursuant to § 574.8(a)(4), or, if such review is denied, or the disapproval issued by the Corporation, may within 10 days of receipt of the notice of disapproval, or notice of the Corporation's decision not to review the denial, request an administrative hearing under paragraph (4) of the Control Act.

(g) *Presumptive disqualifiers.*—(1) *Integrity factors.* The following factors shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of paragraph (c) of this section or the integrity test of paragraph (d)(4) of this section:

(i) During the 10-year period immediately preceding filing of the application or notice, criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any federal or state

court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

(A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;

(B) Violation of securities or commodities laws or regulations;

(C) Violation of depository institution laws or regulations;

(D) Violation of housing authority laws or regulations;

(E) Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization;

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, be the acquiror or affiliates of the acquiror, of

(A) Any application relating to the organization of a financial institution, (B) an application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act or otherwise, (C) a notice relating to a change in control of any of the foregoing under the Change in Savings and Loan Control Act or the Change in Bank Control Act; or (D) an application or notice under a state holding company or change in control statute.

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years or any management official of the acquiror was a management official or director of a company or insured institution which entered receivership or conservatorship, was placed in a management consigment program, or was liquidated during his tenure or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the Corporation (or its delegate) in connection with an application, notice or other filing under this Part that is false or misleading with respect to a material fact or omits to state material fact with respect to information furnished or requested in connection with such an application, notice or other filing;

(vi) Acquisition and retention at the time of submission of an application or notice, of stock in the insured institution by the acquiror in violation of § 574.3 or its predecessor sections.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial-resources and future-prospects tests of paragraph (c) of this section, or the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the Corporation, create excessive risks of default and pressure on the insured institution to be acquired;

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

§ 574.8 Delegations of authority.

(a) *Actions by the Principal Supervisory Agent.*—(1) *Approval.* The Principal Supervisory Agent is authorized to grant approval of any application filed under § 574.3(a) of this Part or issue a statement of intent not to disapprove a notice filed under § 574.3(b) of this Part: *Provided,* that the following conditions are met:

(i) Neither the acquiror nor the insured institution to be acquired, or any affiliate of either, is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, and Part 563d of this Chapter, to make a filing with the Board under any of the following regulations in connection with the transaction in which the acquisition would occur:

(A) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(B) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(C) Regulation 14A, 17 CFR 240.14a–1 through 240.14a–101 (for solicitation of proxies);

(D) Regulation 14C, 17 CFR 240.14c–1 through 240.14c–101 (for distribution of information statements in lieu of solicitation of proxies); or

(E) Regulations 14D or 14E, 17 CFR 240.14d–1 through 240.14f–1 (for tender offers);

(ii) The acquisition is not opposed by the institution to be acquired or contested by another prospective acquiror;

(iii) The application or notice does not raise a significant issue of law or policy; and

(iv) Where the acquiror is a company, the company is willing to agree in writing that:

(A) It will ensure that its subsidiary insured institution shall have, at the end of each calendar quarter, net worth at least equal to the amount that may be required pursuant to § 563.13 of this Chapter, and that where necessary, the company will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with such undertaking: *Provided,* that where a company proposes to acquire less than 50 per cent of the voting stock of an insured institution, such company agrees to the foregoing net worth maintenance undertaking on a *pro rata* basis according to its percentage ownership of the insured institution's voting stock; and

(B) The company will service its debt without receiving dividends from the acquired insured institution subsidiary in excess of 50 percent of the subsidiary's net income per year on a cumulative basis, and will not receive dividends from the insured institution in excess of that amount, unless waived by the Supervisory Agent (*1*) on supervisory grounds; (*2*) in cases where the assets of the institution to be acquired will constitute less than five percent of the assets of the insured subsidiary institution(s) of the acquiring company for acquisitions by savings and loan holding companies that have not agreed to restrict the dividends received from, or guarantee the net worth of, its subsidiary insured institution(s).

(2) *Denial.* The Principal Supervisory Agent is authorized to disapprove any application or notice that he is authorized to approve or for which he is authorized to issue a statement of intent not to disapprove under paragraph (a)(1) of this section. Such disapproval shall be in writing, shall set forth with specificity the basis for the denial or disapproval and shall be furnished promptly to the acquiror.

(3) *Other actions.* For notices filed pursuant to § 574.3(b) of this Part, and applications filed pursuant to § 574.3(a) of this Part, which may be approved under paragraph (a) of this section, the Principal Supervisory Agent may take the following actions:

(i) Any action regarding publication provided for in § 574.6(d) of this Part;

(ii) A determination that an application or notice is sufficient or requiring additional information under § 574.6(c)(1) of this Part;

(iii) Extensions of the review period under § 574.6(c)(3)(i) of this Part for up to 30 days;

(iv) A grant or denial of a request for waiver of certified financial statements for an acquiror's proprietary interests required in connection with notice filed under § 574.3(b) of this Part: *Provided,* that the acquiror providers the following substitute information: (A) A statement supporting the acquiror's contention that production of such certified financial statements is unduly burdensome; (B) tables setting forth (*1*) the acquiror's percent of interest in the insured

institution to be acquired, the amount of investment in the insured institution and the investment as a percentage of the acquiror's net worth and (2) the amount of each entry as a percentage of the acquiror's total assets, net worth and gross income; (3) available unaudited financial statements for each entity for which a waiver has been requested which include at least three years of statements for each entity of operations and interim statements within 90 days of the most recently filed amendment, and 2 years of statements of condition and interim statements within 90 days of the most recently filed amendments; (4) a letter from an independent accountant indicating changes that would be required to reconcile the financial statements with ones prepared on a basis that would be consistent with generally accepted accounting principles; and (5) the lastest available Federal income tax returns for each entity for the immediately preceding two taxable years.

(v) Notification of the state supervisory agent pursuant to § 574.6(h) of this Part.

(4) *Appeal.* Denial of an application or notice by a Principal Supervisory Agent pursuant to paragraph (a) of this section may be appealed to the Corporation under the following procedures: Within 20 days after notification of the Principal Supervisory Agent's decision as provided herein, the acquiror must notify the Office of the Secretariat of the acquiror's desire to appeal the Principal Supervisory agent's decision. Two copies of such request for review must be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with one copy indicated "Attention: Director, Office of Examinations and Supervision" and a second copy indicated "Attention: Office of General Counsel, Enforcement Division," with one copy to the appropriate Principal Supervisory Agent. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial or notice of disapproval is contended to be erroneous. If an applicant does not file an appeal within the time permitted under this section, any objection to the initial determination by the applicant is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

(b) *Joint actions by the Director of the Office of Examinations and Supervision and the General Counsel.* The Director of the Office of Examinations and Supervision with the concurrence of the General Counsel or their respective designees are authorized to take the following actions:

(1) Approve any application or issue notice of intent not to disapprove any notice (i) which does not raise a significant issue of law or policy, including approval or issuance of notice of intent not to disapprove applications or notices that are opposed by the insured institution to be acquired or contested by another prospective acquiror, and

(ii) which does not involve net worth maintenance or dividend conditions that fail to conform to paragraph (a)(1)(iv) of this section;

(2) Decide whether a determination of control under § 574.4(b) of this Part or a presumption of acting in concert under § 574.4(d) of this Part has been rebutted;

(3) With regard to notices filed under § 574.3(b) of this Part, to acquire control of insured institutions which cannot be approved under paragraph (a) of this section:

(i) All actions regarding publication required or permitted by § 574.6(d) of this Part;

(ii) Any other action which would otherwise be delegated to the Principal Supervisory Agent pursuant to paragraphs (a) (1) and (3) of this section;

(4) Grant waivers of certified financial statements for an acquiror's proprietary interests in connection with notices filed under § 574.3(b) of this Part which cannot be approved under paragraph (a) of this section.

(5) Notify the state supervisory agent pursuant to § 574.6(h) of this Part.

(c) *Sole authority in the Corporation.* The Corporation alone may:

(1) Approve or deny any applications or determine whether to disapprove notices which are not delegated;

(2) In addition to any other remedies available to the Corporation, assess a civil penalty under paragraph (16) of the Control Act for any person who willfully violates any provision of the Control Act, or any regulation or order issued by the Corporation pursuant thereto, of not more than $10,000 per day for each day during which the violation continues:

(i) By giving written notice of the basis for the violation, the amount of the proposed civil penalty, and an opportunity for the person to submit data, views, and arguments within 20 days; and

(ii) By giving due consideration to the appropriateness of the penalty with respect to each of the factors specified in paragraph (16) of the Control Act, 12 U.S.C. 1730(q)(16), and issuing to the person, within 30 days of the expiration of the period provided to make a submission, a written notice of the Corporation's order of assessment which must be paid within 10 days, unless otherwise agreed to, or the Corporation may bring an action to collect the assessed penalty;

(3) In addition to any other remedies available to the Corporation, assess a civil penalty of up to $1,000 per day for each day during which the violation continues under section 408(j) of the Holding Company Act, 12 U.S.C. 1730a(j), for any company that violates or any person who participates in a violation of the Holding Company Act or any regulation or order issued pursuant thereto. As used in this paragraph, the term "violates" includes, without limitation, any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding and abetting a violation;

(4) Cause the review period to commence again after a determination of sufficiency has been made under § 574.6(c)(2) of this Part, or extend the review period pursuant to § 574.6(c)(3)(ii) of this Part.

(5) Grant waivers under § 574.6(c)(5).

SUBCHAPTER F—SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

5. The authority citation for Part 584 continues to read as follows:

Authority: Sec. 408, 82 Stat. 5 (12 U.S.C. 1730a) unless otherwise noted.

6. Revise § 584.4 as follows:

§ 584.4 Prohibited acquisitions.

No savings and loan holding company, directly or indirectly, or through one or more transactions, shall:

(a) Acquire by purchase or otherwise any of the voting stock or shares of an insured institution not a subsidiary, or of a savings and loan holding company not a subsidiary, and in addition, in the case of a multiple savings and loan holding company, acquire or retain more than five percent of the voting shares of any company becoming a savings and loan holding company for more than one year after that and which is not a subsidiary but is engaged in any business activity other than those specified in of § 584.2(b) or § 584.2-1(b); or

(b) Acquire control of an uninsured institution or retain, for more than one year after other than an insured institution or holding company thereof, the date any insured institution subsidiary becomes uninsured, control of such institution.

§ 584.4-1 [Removed]

7. Remove § 584.4-1.

§ 584.10 [Amended]

8. Amend § 584.10 by removing paragraph (d) thereof and redesignating paragraph (e) as new paragraph (d).

PART 589—BOARD RULINGS

§ 589.1 [Removed]

9. Remove § 589.1.

§ 589.2 [Removed]

10. Remove § 589.2.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-27799 Filed 11-25-85; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Parts 543, 546, 552 and 563

[No. 85-1006]

Delegated Merger Approvals; Principal Supervisory Agents Authority

Dated: November 8, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations which delineate the authority of its Principal Supervisory Agents ("PSAs") to approve applications involving mergers, consolidations, bulk transfers and other transfers of assets and liabilities, of thrift institutions whose deposits are insured by the Federal Savings and Loan Insurance Corporation ("Corporation") and federally-chartered savings banks whose deposits are insured by the Federal Deposit Insurance Corporation ("FDIC"). The amendments are designed to facilitate expeditious disposition of such applications by significantly expanding the authority delegated to the Principal Supervisory Agents to approve, as well as to deny, applications. A new delegation to the Board's Washington staff of the transactions which fall outside of the authority delegated to the PSAs will also improve the timeliness of the Board's application procedures. In addition, the Board has issued a final rule delegating to the PSAs the authority to charter certain interim institutions which are used solely to facilitate other transactions in order to further expedite applications processing. Finally, the Board is amending and simplifying its rules regarding the rights of shareholders to an appraisal of their shares in connection with certain types of mergers and consolidations.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Attorney (202-377-6453); Laura Patriarca, Deputy Director (202-377-6411); Julie L. Williams, Associate General Counsel, Director (202-377-6459); Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Board Resolution No. 85-289b, dated April 17, 1985, 50 FR (April 25, 1985), the Board proposed to amend its regulations delegating authority to its Principal Supervisory Agents to approve certain mergers, consolidations and bulk purchases or transfers of assets (collectively referred to as "mergers"), as well as other transfers of assets and liabilities, of insured institutions. Mergers involving federally-chartered savings and loan associations and savings banks ("federal associations") are subject to approval by the Board. 12 CFR 546.2, 552.13 (1985). Transactions that result in an increase in the insurable accounts of an institution whose deposits are insured by the Corporation ("insured institutions") are also subject to approval by the Board, as operating head of the Corporation. 12 CFR 563.22 (1985).

Under the Board's current regulations, certain mergers and increases in insurable accounts are deemed approved if no objection has been raised by the Principal Supervisory Agent (*i.e.*, the president of the Federal Home Loan Bank of which both the institutions are members) within 30 days after filing a completed merger application. An application qualifies for automatic approval unless any of the following circumstances is present:

(1) The resulting association requests the granting of supervisory forbearances;

(2) The principal Supervisory Agent recommends the imposition of nonstandard conditions prior to approving the merger;

(3) The application has been substantially protested;

(4) The Principal Supervisory Agent raises objections to the merger;

(5) The resulting association would be one of the 3 largest depository institutions competing in the relevant geographic area, where before the merger there were 5 or fewer depository institutions; the resulting association would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(6) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 6 to 11 depository institutions, the resulting association would have 30 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 10 percent or more;

(7) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 12 or more depository institutions, the resulting association would have 35 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(8) The Herfindahl-Hirschman Index ("HHI") in the relevant geographic area is more than 1800 before the merger, and the increase in the HHI caused by the merger would be 50 or more;

(9) In a merger involving potential competition, the Principal Supervisory Agent determines that the acquiring association is one of 3 or fewer potential entrants into the relevant geographic area;

(10) Both the acquiring and an acquired association have assets of $1 billion or more;

(11) The association that will be the resulting association (other than an association that is neither insured by the Corporation nor chartered by the Board) in the merger has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Board's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the Principal Supervisory Agent;

(12) The resulting association's (other than an association that is neither insured by the Federal Savings and Loan Insurance Corporation nor chartered by the Board) net worth would not at least equal the Board's regulatory net-worth requirements. Where goodwill has been included in the resulting association's assets, the applicant must submit an opinion of a certified public accountant, satisfactory to the Principal Supervisory Agent, that its use and value are appropriate under, and accounted for, by generally accepted accounting principles. For purposes of this provision, in calculating whether the net

worth of the resulting association will at least equal the amount required under § 563.13(b), the Principal Supervisory Agent may exclude scheduled items which will be acquired in the merger and the amount of either: (A) The net-worth deficiency or (B) the liabilities, including averaged liabilities, of the acquired association at the date of merger;

(13) The merger involves any agreement with the Federal Savings and Loan Insurance Corporation;

(14) The merger would result in the conversion of a mutual association to a stock association;

(15) The Principal Supervisory Agent determines that the financial condition of the resulting association would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision;

(16) The merger includes an association that has a class of voting securities registered with the Board under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj); or

(17) The merger application involves unusual circumstances or policy questions.

See 12 CFR 546.2(h), 563.22(e) (1985).

Under existing §§ 546.2(i) and 563.22(f), applications that did not meet the criteria for automatic approval could still be approved by the Principal Supervisory Agent if the reason for the ineligibility was the necessity for supervisory forebearances or the imposition of non-standard conditions. The Principal Supervisory Agent could also approve applications that did not satisfy the antitrust criteria of paragraphs (5) through (10) if he determined that, but for the merger or other transaction, one of the participating associations would not satisfy minimum financial standards as determined from time to time by the Office of Examinations and Supervision.

The existing automatic approval and original system of delegations has reduced processing time and delay in reviewing applications. However, the Board believes that the system can be further improved by permitting more applications to be handled by the Principal Supervisory Agents. In the Board's proposal, this was accomplished by preliminarily identifying which transactions are appropriate for review by the Board and delegating the remainder to the Principal Supervisory Agents and to the Board's Washington Staff.

The proposed amendments retained the automatic approval system (with a technical correction) but significantly expanded the authority of the Principal Supervisory Agents to approve applications. For the first time, the Board also proposed delegating the authority to deny merger and increase of insurable accounts applications to its Principal Supervisory Agents. Only those applications involving significant legal or policy issues on which the Board has not taken a formal position, would have been decided by the Board. The Board also would consider appeals from applicants denied permission to merge by the Principal Supervisory Agent.

In particular, in Board Resolution No. 85–289b, the Board proposed that the authority of the Principal Supervisory Agents to approve or to deny applications would be circumscribed only where:

(1) Neither the acquirer or the insured institution to be acquired is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, to make a filing under any of the following rules or regulations in connection with the acquisition:

(a) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(b) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(c) Regulation 14A, 17 CFR 240.14a–1 through .14a–101 (for solicitation of proxies);

(d) Regulation 14C, 17 CFR 240.14c–1 through .14c–101 (for distribution of information statements); or

(e) Regulations 14D or 14E, 17 CFR 240.14d–1 through 240.14f–1 (for tender offers).

(2) Either institution has notified the Supervisory Agent in writing, within 10 days of the date of publication of the application under § 543.2(d), of its opposition to the proposed transaction;

(3) The transaction would entail the merger of a mutual association into a stock association, with a stock association, with a stock association as the resulting association;

(4) The acquisition raises significant issues of law or policy.

The Board proposed to reserve from delegated authority to the Principal Supervisory Agents applications by institutions making the specified types of filings under the Securities Exchange Act on the grounds that processing of such applications should be coordinated with review of the required securities filings in Washington. Authority over mergers resulting in the conversion of a mutual association to the stock form of organization similarly would not have been delegated, since such mergers of mutual institutions into stock institutions constitute merger-conversions requiring conversion applications under 12 CFR 563b.10 (1985), which must be processed in Washington. The delegation of authority relating to contested reservation of acquisitions was intended to ensure Washington review of sensitive applications and to facilitate coordination with the Board's enforcement and litigation staff.

Other applications present issues of first impression which only the Board should decide, or raise sensitive legal or policy matters which the Board wishes to have the opportunity to resolve, such as mergers with interstate implications, or bulk purchase-of-assets transactions which accomplish bank-to-thrift conversions. (In Board Resolution No. 85–288, dated April 17, 1985, (50 FR 16071, April 24, 1985) the Board expressly reserved a delegation of authority over purchase and assumption "conversions" as a category of transaction involving significant issues of policy and law.) The Board expects the Principal Supervisory Agents to work closely with its Washington staff and regularly report features of transactions that may signal new or unusual issues. The Board specifically intends to rely on the discretion and expertise of its staff to keep the Board informed and to refer applications to the Board where significant legal or policy issues are present. There is no process or procedure for petitioning the Board to cause the Board to take up such matters directly, and the Board does not intend to entertain such petitions. The Board believes that the portions of the rule adopted today concerning delegations fully address the issues that may arise and the Board intends that these provisions be followed in all cases.

In the proposal, the Board also expressed the belief that the involvement of an interim association should not, in and of itself, raise a policy issue requiring referral of a merger application to Washington. The presence of other factors in such a merger, such as freezeout of minority interests, is needed to justify referral. (However, it should be noted that where stockholders of an institution must vote on the merger with the interim and the institution's stock is registered under the Securities Exchange Act, a proxy statement would be required pursuant to Regulation 14A and thus approval authority for the merger would not be delegated to the Principal Supervisory Agent, but could be handled under delegated authority by Washington staff.)

It should also be noted that the delegation covers mergers,

consolidations and transfers, including the purchase or sale of assets and assumption of savings account and other liabilities. Generally, transfers include branch sales and transfers in bulk not made in the ordinary course of business. Certain types of bulk transfers may be ineligible for delegated approval by the Principal Supervisory Agent, although it is likely that branch sales will be handled under delegated authority by the Principal Supervisory Agents because transactions solely involving branch sales are unlikely to trigger any of the factors that would prevent the application from being eligible to be considered by the Principal Supervisory Agent under delegated authority.

Because the proposed delegation would have permitted denials of applications by the Principal Supervisory Agent, the Board proposed to amend the merger regulations to provide a procedure for appeal of such adverse decisions to the Board. As proposed, an applicant would have had 20 days following notification of a decision in which to file an appeal with the Board's Office of the Secretariat with copies of the appeal to the attention of the Director of the Office of Examinations and Supervision, the General Counsel, and the Director of the Office of District Banks. Applicants would have been required to indicate with specificity why the Principal Supervisory Agent's denial should be overturned.

In sum, the amendments would have established a multi-tiered system for the disposition of all merger applications. Some mergers would have qualified for automatic approval; others would have qualified for delegated approval or denial by the Principal Supervisory Agent.

Mergers in which a constituent must make certain securities filings, mergers involving a contested acquisition and mergers involving a mutual-to-stock conversion, would have been reserved from delegated authority to the Principal Supervisory Agent. In addition, mergers presenting unusual policy issues would have required decision by the Board. The Board also would have continued to decide all supervisory mergers involving Corporation assistance. In addition, the Board would consider any denial of a merger application rendered by its Principal Supervisory Agent when timely appealed under procedures established by the regulation.

In addition to the foregoing, in a related area, the Board proposed to amend its regulations governing the appraisal rights of shareholders in federal associations who dissent from a merger. Like most state corporate codes, the Board's regulations governing the internal operations of federal stock associations allow shareholders who vote against a merger to demand payment for their shares in an amount equal to their appraised value. 12 CFR 552.14(a) (1985). Under the current regulations, these appraisal rights are inapplicable when the shares in question are listed on a national securities exchange on the date of the shareholders' meeting at which the merger proposal is considered. 12 CFR 552.14(b) (1985). Such exchange-traded shares were exempted from the appraisal remedy because dissenting shareholders in these institutions would have adequate opportunity to dispose of their shares without the necessity of an appraisal procedure. *Stock Associations; Mergers and Consolidations*, Resolution No. 79-445, 44 FR 49241, 49242 (Aug. 22, 1979). In view of the development of the National Association of Securities Dealers Automated Quotation (NASDAQ) System as an alternative to the national exchanges for marketing stock, the Board proposed to expand the appraisal exemption to reference this system as well. In other recent regulations, the Board has considered a NASDAQ listing as indicative of a developed trading market, *see* 12 CFR 563.18-2(b)(5) (1985), and considers this an appropriate standard for the appraisal remedy, as well. *See also Regulation of Direct Investment by Insured Institutions*, Resolution No. 85-779-A, 50 FR 6912 (Feb. 19, 1985); Resolution No. 84-715, 49 FR 48743, 48754 (Dec. 14, 1984). NASDAQ listing also provides shareholders with a ascertainable standard for determining when the appraisal remedy will apply.

Summary of Comments

The Board received seven comments in response to its proposal. Three comments each were received from savings and loan associations and trade associations. The remaining comment was received from a law firm. All commenters were supportive of the proposal.

Several commenters made specific recommendations to further expand or improve the proposal. One commenter suggested expanding the delegation to include associations with stock registered under the federal securities laws. Under the existing delegation, mergers involving an association with securities registered under the Securities Exchange Act of 1934 ("'34 Act"), must be decided by the Board. Under the proposed expanded delegation, only mergers in which a '34 Act registrant is required to make certain filings in connection with the transaction would not have been delegated to the Principal Supervisory Agent; mere registration of a constituent would not disqualify a merger for PSA-delegated approval. The Board has determined to retain this provision, but notes that many mergers which involve a registered company will trigger one of the filings, thereby precluding PSA-delegated approval.

Another commenter was concerned that the delegation would result in inconsistent treatment of merger applicants by the various Federal Home Loan Banks. To remedy this perceived problem, the commenter suggested that the Board adopt more explicit guidelines. In response, the Board notes it has in place a policy statement on the review and evaluation of mergers at § 571.5 of the Regulations for the Federal Savings and Loan Insurance Corporation. 12 CFR § 571.5 (1985). In the Board's opinion, this policy statement, which sets forth in considerable detail the requirements and guidelines to be followed in evaluating merger applications, provides sufficient safeguards to ensure that the delegation process will not be significantly hindered by inconsistent application. Moreover, the proposed appeals procedures, which another commenter addressed favorably, also will help to offset discrepancies among different Federal Home Loan Banks.

A commenter also recommended that the Board not delegate mergers that are assisted by the Corporation. It was not the Board's intention to delegate such transactions and therefore the Board has clarified the treatment of supervisory mergers in the final rule.

Another commenter opposed the delegation of interstate mergers, but otherwise supported the proposal. The Board concurs with this recommendation and notes that it currently considers such transactions to raise significant issues of law or policy requiring referral to the Board for decision.

The Final Rule

The final rule is being adopted substantially as proposed with several, mostly minor, exceptions. The Board is correcting an inadvertent error in the criterion concerning the reservation of authority where *either* (rather than neither) constituent is subject to certain securities laws filing requirements. In addition, in recognition that a contested merger transaction could involve competing acquirors, the Board is modifying the language of the contested acquisition reservation of authority criterion to clarify its scope in this

respect. The Board also is clarifying its intent, as noted above, that mergers involving assistance agreements with the Corporation must be acted upon by the Board.

The other standards reserving delegated authority from the Principal Supervisory Agents are unchanged from the Board's proposal. However, in order better to monitor substantial transactions that may tend to present legal or policy issues of concern to the Board, the Board is directing the Principal Supervisory Agents to notify the Board promptly of any merger transaction in which both constituents have assets of $1 billion or more.

The Board's final rule expressly permits Principal Supervisory Agents to approve or deny mergers involving interim associations where the interim association is chartered solely to facilitate the merger and its corporate existence will not continue after consummation of the transaction. In addition, the Board recognizes that the presence of an interim association would, nevertheless, continue to require Board action as long as it had to be chartered in Washington. However, by Board Resolution No. 85-821, dated September 13, 1985, the Board proposed to delegate to its Principal Supervisory Agents the authority to approve the formation of interim federal associations chartered only to facilitate other transactions where the corporate existence of the interim will not continue after the transaction is consummated. (*See*, 50 FR 38839, September 25, 1985.) Since this authority is incidental to and needed to effectuate the Board's intended merger delegations, the Board is taking this opportunity to adopt in final form the delegation to charter such interim institutions and is revising §§ 543.2(h) and 552.2-2, accordingly.

The Board also has determined to amend the criteria for automatic approval. Sections 546.2(h)(1)(xii) and 563.22(e)(1)(xii) disqualify a merger for automatic approval if the resulting institution does not meet the Board's net-worth requirement. The technical correction adopted today would also disqualify mergers from automatic approval if the resulting institution is insured by the Federal Deposit Insurance Corporation and is not meeting its FDIC-imposed capital requirements. In addition, new §§ 546.2(h)(1)(xvii) and 563.22(e)(1)(xvii) have been adopted to prevent contested transactions from being automatically approved.

The final rule also establishes a new procedure to facilitate efficient disposition of delegated transactions which may be found in amendments to §§ 546.2(c), 552.13(h)(2) and 563.22(b) which require that applications include a statement as to whether the transaction may be approved automatically or processed under delegated authority, specifically asserting that none of the disqualifying factors are present. In addition, conforming amendments at new §§ 546.2(j) and 552.13(o) are being adopted as well as a technical amendment to § 552.13(e) which implements the Board's intent to permit mergers of certain federal stock associations to be approved automatically in the same way that mergers involving certain state chartered stock associations may be so approved.

Finally, as an administrative matter, the Board has directed that the Director of the Office of District Banks should also receive a copy of a notice to appeal the denial of merger application by the Principal Supervisory Agent. Accordingly, proposed §§ 546.2(2) and 563.22(2) have been correspondingly amended in the Final Rule. In addition, for purposes of carrying out its responsibilities under the Fair Housing Act, Equal Credit Opportunity Act and Community Reinvestment Act, the Board hereby directs its Principal Supervisory Agents to report to the Board's Office of Community Investment any CRA-related fair-lending issues that arise in the course of processing merger applications.

The rule will be effective 30 days after publication for applications filed after that date. Applications that are filed earlier or are pending before that date will be processed under the current rule.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the rule.

2. *Small entities to which the rules will apply.* The rule would apply to all insured institutions.

3. *Impact of the rules on small institutions.* Delegations will benefit primarily smaller institutions since it will result in expedited processing of their applications. Appraisal procedure amendments will impose no new requirements on smaller institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the final rule.

5. *Alteratives to the rule.* No other alternatives would better simplify the application process while retaining essential supervisory safeguards.

List of Subjects in 12 CFR Parts 543, 546, 552, and 563

Mergers, Securities, Savings and Loan Associations, Savings and Loan Holding Companies.

Accordingly, the Board hereby amends Parts 543, 546, and 552 and Chapter C and Part 563 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for Part 543 continues to read:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947; 3 CFR, 1943-1948 Comp., unless otherwise noted.

2. Amend § 543.2 by revising paragraphs (h)(1) and (h)(2) and adding a new paragraph (h)(3) as follows:

§ 543.2 Application for permission to organize.

* * * * *

(h) *Alternative procedures for interim Federal associations.* (1) The procedures prescribed by paragraphs (d) through (g) of this section shall not be required with respect to applications for permission to organize an interim Federal association except as may be required by Parts 546, 563, or 574 of this chapter.

(2) Preliminary approval of an application for permission to organize an interim Federal association shall be conditioned on Board or delegated approval of an application to merge the interim Federal association and an existing insured stock institution or on Board or delegated approval of any other transaction. After organization has been completed pursuant to § 543.6(d) of this part, final approval may be granted in conjunction with Board or delegated approval of an application or information filing made under Part 574. In evaluating the information provided in accordance with the requirements of paragraph (b) of this section, the Board will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing institutions involved in the transactions, and the effect of the transactions on the

community and on other properly conducted existing thrift institutions.

(3) The authority of the Board to approve applications for permission to organize an interim Federal association under paragraph (g) of this section may be exercised by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter), provided that the corporate existence of the interim Federal association will not continue after consummation of the transaction which the interim Federal association is chartered to facilitate and that the Principal Supervisory Agent possesses the authority to approve the remaining aspects of the transaction.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

3. The authority citation for Part 546 continues to read:

Authority: Secs. 5, 406, 48 Stat. 132, as amended, 1259, as amended; 12 U.S.C. 1464, 1729, Reorg. Plan No. 3 of 1947; 3 CFR, 1943–1948 Comp., unless otherwise noted.

4. Amend § 546.2 by revising paragraph (c) revising paragraph (h)(1)(xii) and adding new paragraph (h)(1)(xviii), revising paragraph (i) and adding new paragraph (j), as follows:

§ 546.2 Procedure; effective date.

* * * * *

(c) Board approval for the merger shall be requested by filing with the resulting member's Bank two copies of an application which shall include the merger agreement, properly executed in the name of the respective associations, and two certified copies of the portions of the minutes of the boards of directors of the respective associations relating to their consideration and approval of the plan of merger. Where the filing party believes its application is eligible to be processed under paragraphs (h) or (i) of this section, that party shall also submit a brief summary of the proposed transaction and a statement as to why the application may be processed under delegated authority, including an affirmative statement that none of the factors specified in paragraph (h) or (i) of this section which would preclude automatic approval or action under delegated authority are present. Upon receipt of a merger application, the Board will approve the merger, disapprove it, or withhold action and recommend modification of the plan. If the boards of directors of the associations accept the recommended modifications, they shall amend the agreement accordingly and submit it as the original agreement was submitted. An applicant shall also comply with section 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (16 CFR Parts 801, 802 and 803).

* * * * *

(h)(1) * * * *

(xii) The resulting association's (other than an association that is neither insured by the Federal Savings and Loan Insurance Corporation nor chartered by the Board) net-worth would not at least equal the Board's regulatory net worth requirements. (Where the resulting association's accounts are insured by the Federal Deposit Insurance Corporation, its net worth would not at least equal the amount required under the capital requirements of the Federal Deposit Insurance Corporation.) Where goodwill has been included in the resulting association's assets, the applicant must submit an opinion of a certified public accountant, satisfactory to the Principal Supervisory Agent, that its use and value are appropriate under, and accounted for, by generally accepted accounting principles. For purposes of this provision, in calculating whether the net worth of the resulting association will at least equal the amount required under § 563.13(b), the Principal Supervisory Agent may exclude scheduled items which will be acquired in the merger and the amount of either the net-worth deficiency or the liabilities, including averaged liabilities, of the acquired association at the date of merger;

* * * * *

(xviii) The transaction is opposed by either constituent association or contested by a competing acquiror.

* * * * *

(i)(1) The authority of the Board (including recommending modification of a plan of merger, consolidation, or purchase of bulk assets or denial of an application) under paragraph (c) of this section may be exercised by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter) unless:

(i) Either constituent association is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, or Part 563d of this Chapter to make a filing with the Board under any of the following rules or regulations in connection with the transaction:

(*a*) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(*b*) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(*c*) Regulation 14A, 17 CFR 240.14a–1 through 240.14a–101 (for solicitation of proxies);

(*d*) Regulation 14C, 17 CFR 240.14c–1 through 240.14c–101 (for distribution of information statements); or

(*e*) Regulations 14D or 14E, 17 CFR 240.14d–1 through 240.14f–1 (for tender offers).

(ii) The transaction is opposed by either constituent association or contested by a competing acquiror;

(iii) A mutual association would merge into a stock association with the stock association as the resulting association;

(iv) The transaction involves any agreement with the Federal Savings and Loan Insurance Corporation;

(v) The transaction raises any significant issues of law or policy.

(2) The authority of the Board (including recommending modification of a plan of merger, consolidation, or purchase of bulk assets) under paragraph (c) of this section may be exercised by the Director of the Office of District Banks with the concurrence of the Director of the Office of Examinations and Supervision and the General Counsel, unless:

(i) The transaction raises any significant issues of law or policy; or

(ii) The transaction involves any agreement with the Federal Savings and Loan Insurance Corporation.

(3) Denial of an application pursuant to delegated authority under this section may be appealed to the Corporation under the following procedures:

(i) Within 20 days after notification of the Principal Supervisory Agent's decision, the applicant may notify the Secretary to the Board of the applicant's desire to appeal the Principal Supervisory Agent's decision. Four copies of such request for review must be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with three of such copies addressed, respectively, to the attention of the Director, Office of Examinations and Supervision, the General Counsel, and the Director, Office of District Banks. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous.

(ii) If an applicant does not file an appeal within the time permitted under this section, any objection to the initial determination by the applicant is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

(j) All references to the Board in paragraphs (a) through (g) of this Part shall be read to include its delegates under paragraph (i) of this section; the

Principal Supervisory Agent or the Director of the Office of District Banks, Office of Examinations and Supervision and the General Counsel.

PART 552—INCORPORATION, ORGANIZATION, CONVERSION, AND GOVERNANCE OF FEDERAL STOCK ASSOCIATIONS

5. The authority citation for Part 552 continues to read:

Authority: Sec. 105, Pub. L. 93–495, Oct. 28, 1974; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C 1725, 1726, 1730; sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071, unless otherwise noted.

6. Amend § 552.2–2 by revising paragraphs (a) and (b) and adding new paragraph (d) as follows:

§ 552.2–2 Procedures for organization of interim Federal stock association.

(a) The procedures prescribed in paragraphs (d) through (g) of § 543.2 of this subchapter and § 552.2–1(b) of this part shall not be required with respect to applications for permission to organize an interim Federal stock association except as may be required by Parts 546, 563, or 574 of this Chapter.

(b) Preliminary approval of an application for permission to organize an interim Federal stock association shall be conditioned upon Board or delegated approval of an application to merge the interim Federal stock institution, or upon Board or delegated approval of any other transaction. After organization has been completed pursuant to § 552.2–1(h) and (i) of this part, final approval may be granted in conjunction with Board or delegated approval of an application or information filing made pursuant to Part 574. In evaluating the information provided in accordance with the requirements of § 543.2(b), the Board will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing institutions involved in the transactions, and the effect of the transactions on the community and on other properly conducted existing thrift institutions.

* * * * *

(d) The authority of the Board to approve applications for permission to organize an interim Federal association under paragraph (g) of the Subchapter may be exercised by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter), provided that the corporate existence of the interim Federal association will not continue after consummation of the transaction which the interim Federal association is chartered to facilitate and that the Principal Supervisory Agent possesses the authority to approve the remaining aspects of the transaction.

7. Amend § 552.13 by revising paragraph (e), pararaph (h)(2) of and adding new paragraph (o).

§ 552.13 Combinations involving Federal stock associations.

* * * * *

(e) *Approval by the Board's Principal Supervisory Agent.* The specific approval of the Board (including recommending modifications of the plan of merger, consolidation, or purchase of bulk assets) required by paragraph (d) of this section may be given by the Board's Principal Supervisory Agent in accordance with the conditions set forth in § 546.2 (h) and (i) of this Subchapter.

* * * * *

(h) *Application for Board approval.*

* * * * *

(2) *Filing Requirement.* Constituent associations shall file jointly and concurrently two copies of the application prepared pursuant to this section whith their Principal Supervisory Agent, and two with the Board's Office of the Secretary. Where the filing party believes its application is eligible to be processed under paragraph (e) of this section, the filing party shall also submit a brief summary of the proposed transaction and an affirmative statement that none of the factors specified in § 546.2(h) or (i) of this Subchapter which would preclude automatic approval or action under delegated authority are present.

* * * * *

(o) All references to the Board in this section shall be read to include its delegates under paragraph (e) of this section, the Principal Supervisory Agents and the Directors of the Office of District Banks, the Office of Examination and the General Counsel.

8. Revise paragraph (b) of § 552.14, as follows:

§ 552.14 Dissenters' appraisal rights.

* * * * *

(b) *Exceptions.* No stockholder required to accept only qualified consideration for his stock shall have the right under this section to demand payment of the stock's fair or appraised value, if such stock was listed on a national securities exchange or quoted on the National Association of Securities Dealers' Automated Quotation System ("NASDAQ") on the date of the meeting at which the combination was acted upon or stockholder action is not required for a combination made pursuant to § 552.13(i)(3) of this Part. "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national securities exchange, or quoted on NASDAQ any combination of shares of stock and cash described above.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

9. The authority citation for Part 563 continues to read:

Authority: Secs. 401–405, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

10. Amend § 563.22 by revising paragraph (b), revising paragraph (e)(1)(xii), adding new paragraph (e)(1)(xviii) and by revising paragraph (f), as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(b) No insured institution may at time make a transfer, as defined in § 571.5(a) of this Subchapter, of assets or savings account liabilities without application to and approval by the Corporation: *Provided,* that any insured institution that must receive approval for such transfer from the Federal Deposit Insurance Corporation pursuant to section 5 (o)(2)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(o)(2)(D), shall not be subject to approval by the Corporation under this paragraph. Application for approval under this section shall be upon forms prescribed by the Corporation and shall contain such information as the Corporation may require. Where the filing party believes its application is eligible to be processed under paragraphs (e) or (f) of this section, the filing party shall also submit a brief summary of the proposed transaction and an affirmative statement that none of the factors specified in paragraphs (e) or (f) of this section which would preclude automatic approval or action under delegated authority are present.

* * * * *

(e)(1) * * *

(xii) The resulting association's (other than an association that is neither insured by the Corporation nor chartered by the Board) net-worth would not at least equal the amount

required under the Board's regulatory net-worth requirements. (Where the resulting association's accounts of are insured by the Federal Deposit Insurance Corporation, its net-worth would not at least equal the required amount under the capital requirements of the Federal Deposit Insurance Corporation.) Where good will has been included in the resulting association's assets, the applicant must submit an opinion of a certified public accountant, satisfactory to the Principal Supervisory Agent, that its use and value are appropriate under, and accounted for by, generally accepted accounting principles. For purposes of this provision, in calculating whether the net worth of the resulting association will at least equal the amount required under § 563.13(b), the Principal Supervisory Agent may exclude scheduled items which will be acquired in the merger and the amount of either the net-worth deficiency or the liabilities, including averaged liabilities, of the acquired association at the date of merger;

* * * * *

(xviii) The transaction is opposed by either constituent association or contested by a competing acquiror;

* * * * *

(f)(1) The authority of the Corporation (including recommending modification of a plan of merger, consolidation, or purchase of bulk assets or denial of an application) under paragraph (a) of this section may be exercised by the Principal Supervisory Agent (as defined in § 561.25 of this Chapter), unless:

(i) The acquiror or the insured institution to be acquired is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, or Part 563d of this Chapter to make a filing with the Corporation under any of the following rules or regulations in connection with the transaction:

(*a*) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(*b*) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(*c*) Regulation 14A, 17 CFR 240.14a–1 through 240.14a–101 (for solicitation of proxies);

(*d*) Regulation 14C, 17 CFR 240.14c–1 through .14c–101 (for distribution of information statements); or

(*e*) Regulations 14D or 14E, 17 CFR 240.14d–1 through 240.14f–1 (for tender offers).

(ii) The transaction is opposed by either constituent association or contested by a competing acquirer;

(iii) A mutual association would merge into a stock association, with the stock association as the resulting association; or

(iv) The transaction involves any agreement with the Federal Savings and Loan Insurance Corporation.

(v) The transaction raises any significant issues of law or policy.

(2) The authority of the Corporation (including recommending modification of a plan of merger, consolidation, or purchase of bulk assets) under paragraph (c) of this section may be exercised by the Director of the Office of District Banks with the concurrence of the Director of the Office of Examinations and Supervision and the General Counsel, unless:

(i) The transaction raises any significant issues of law or policy; or

(ii) The transaction involves any agreement with the Federal Savings and Loan Insurance Corporation.

(3) Denial of an application pursuant to delegated authority under this section may be appealed to the Corporation under the following procedures:

(i) Within 20 days after notification of the Principal Supervisory Agent's decision, the applicant may notify the Office of the Secretariat of the applicant's desire to appeal the Principal Supervisory Agent's decision. Four copies of such request for review must be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with three of such copies addressed, respectively, to the attention of the Director, Office of Examinations and Supervision, the General Counsel, and the Director, Office of District Banks. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous.

(ii) If an applicant does not file an appeal within the time permitted under this section, any objection to the initial determination by the applicant is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85–27798 Filed 11–25–85; 8:45 am]

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federal register

Tuesday
November 26, 1985

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Relocation Cost Principle; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Relocation Cost Principle

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to FAR 31.205–35, Relocation costs.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 27, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–53 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing several revisions to the cost principle on relocation costs (FAR 31.205–35) to eliminate some bases for possible misinterpretation.

Language defining the time requirement for a permanent change of duty assignment is being refined to make it clear that it must be for 12 months or more to qualify for coverage under the relocation cost principle. The sentence in FAR 31.205–35(a) that qualifies the list of allowable relocation costs by making reference to subsequent paragraphs is being corrected to include all paragraphs that do in fact qualify the allowability of those costs. Finally, a new paragraph (f) is being proposed to clarify the allowability of the relocation costs of employees who are hired, relocated, and returned to their point of hire in connection with specific contracts or long-term field projects.

B. Regulatory Flexibility Act

This proposed change to FAR 31.205–35 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because—

(a) It clarifies the language governing the allowability of contractor-incurred relocation costs;

(b) It will not impose any additional recordkeeping requirements; and

(c) It will not cause additional costs in order to comply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule is a clarification of the rules governing allowability of contractor-incurred relocation costs. It will not change or otherwise affect the collection of information by Federal agencies from offerors, contractors, or members of the public.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 21, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

2. Section 31.205–35 is amended by revising the introductory text of paragraph (a), and by adding paragraph (f) to read as follows:

31.205–35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite or stated period, but in either event for not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to paragraphs (b) through (f) below:

* * * * *

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if—

(1) The term of employment exceed 12 months;

(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;

(3) The employment agreement provides for return relocation to the employee's point of hire or other location of equal or lesser cost; and

(4) The relocation costs are determined under the rules of paragraphs (a) through (e) above. However, the costs of returning employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of paragraph (d).

[FR Doc. 28103 Filed 11–25–85; 8:45 am]

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federal register

Tuesday
November 26, 1985

Part IV

Department of Education

National Institute of Handicapped Research and Demonstration Projects in Research Training for Fiscal Year 1986, Application and Funding Priority; Notices

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Funding Priority for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Research and Demonstration Projects in Research Training for Fiscal Year 1986.

SUMMARY: The Secretary of Education proposes a funding priority for rehabilitation research training to be supported by the National Institute of Handicapped Research (NIHR) in fiscal year 1986. NIHR is required under the Rehabilitation Act of 1973 as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. This proposed priority is derived from the NIHR Long-Range Plan and is articulated within the goals, objectives, and research activities specified in the Plan. Authority for this research training demonstration program is contained in section 204(a) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 and by Pub. L. 98-221 (29 U.S.C. 762(a)).

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priority on or before December 26, 1985.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue, SW (Room 3070, Switzer Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research. Telephone (202) 732-1139; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

SUPPLEMENTARY INFORMATION: The Secretary plans to make awards under section 204(a) of the Rehabilitation Act to public or private agencies and organizations, including institutions of higher education to develop, conduct, and evaluate programs of advanced training in rehabilitation research.

The purpose of these programs is to produce highly qualified researchers in rehabilitation-related disciplines by providing to selected individuals research training and opportunities to conduct rehabilitation research, to participate in individualized programs of academic and professional development in rehabilitation, and to collaborate with recognized experts in rehabilitation research. This activity is intended to prepare future leaders in the field of rehabilitation research.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priority proposed in this notice is for training in rehabilitation research, to be supported under the Research and Demonstration Program. Under this program, NIHR may support research, demonstrations, development, or related activities in areas related to rehabilitation of disabled individuals. NIHR is proposing a priority for one or more projects to train qualified individuals in selected areas of rehabilitation research.

NIHR final regulations (46 FR 45300, September 10, 1981, as amended March 12, 1984 at 49 FR 9324) authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

The Secretary invites public comment on the merits of the proposed priority, including suggested modifications to the proposed priority. Comments can include factors which discuss the importance of the priority to handicapped individuals, or which discuss the appropriateness of the funding mechanisms.

This notice does not solicit application proposals or concept papers. Any final priority will be selected based on public comment, the availability of funds, and any other relevant Departmental considerations. Any final priority will be announced in a Notice of Final Funding Priority to be published in the **Federal Register**. A separate Application Notice, published in this issue of the **Federal Register**, requests applications, sets the closing date, and establishes other conditions for the submission of applications.

This proposed priority represents only one area in which NIHR proposes to support research, training and related activities through grants or cooperative agreements. NIHR anticipates that this research training priority will be supported through the mechanism of a cooperative agreement. Other research or related activities which NIHR expects to support in fiscal year 1986 will be announced through separate priority announcements, or through announcements of investigator-initiated research competitions. Research and other activities which NIHR intends to procure through contracts will be announced by Requests for Proposals published in the *Commerce Business Daily*.

The publication of this proposed priority does not bind the Department to fund projects in this or any other area. Funding of particular projects depends on both the availability of funds and on responses to this notice.

Priority for Rehabilitation Research Training

NIHR is the lead Federal agency responsible for addressing national needs in rehabilitation through research, and for fostering opportunities for the pursuit of scientific inquiry and development of knowledge relevant to the problems of disability. As such, NIHR is concerned with developing a cadre of scientists trained in research related to rehabilitation. The reports of the House and Senate Committees on Appropriations accompanying the NIHR fiscal year 1985 appropriation recommended that NIHR support additional rehabilitation research training.

NIHR has identified a particular need to increase the number of qualified researchers in medicine and allied health fields. Terminal degrees awarded in medicine, and in some related health professions, are basically clinical degrees, and generally do not include the intensive research training necessary to support excellent scientific investigation. The Association of American Medical Colleges, on the basis of a 1984 survey of recent graduates, reported that 56% of respondents believed they had been inadequately prepared in research techniques.

There are many medical specialties which bear directly on the rehabilitation of disabled individuals, including neurology, orthopedics, psychiatry, internal medicine, cardiology, physical medicine and others. To take an example from one of these specialties—physiatry—there are indications that the number of physicians in this area engaged in research is declining. In many areas of medicine, there is ongoing research which is basic scientific inquiry, but which may not directly advance the application of medical science to rehabilitation.

The purpose of this proposed priority is to prepare clinically trained individuals for research careers in the health sciences related to rehabilitation.

A Research and Demonstration Project, to be called a Rehabilitation Research Career Development Project, is proposed to:

- Establish individualized programs to train qualified individuals in rehabilitation research within an environment suitable for advanced training in rehabilitation research; these programs may include didactic instruction, exposure to new

developments and outstanding researchers and practitioners, scientific research experience, scientific mentorship, collegial and collaborative investigations, participation in joint programs involving more than one institution, and participation in meetings and conferences directly related to appropriate research topics;

• Establish such training programs utilizing available facilities, staff, and other resources of existing programs which are demonstrated to be adequate and suitable environments for the conduct of advanced training in rehabilitation research;

• Identify, recruit, and provide individual support to one or more qualified clinicians from among the following eligible categories: individuals licensed to practice medicine, including osteopathic medicine and podiatry, in one or more States; individuals holding a graduate degree in clinical health-related field (e.g., nursing, physical therapy, or other allied health professions); and engineers and other scientists whose overall combination of training, experience, and achievement demonstrates a potential to attain leadership roles in rehabilitation research;

• Provide a research training program which significantly involves the candidates in clinical research at the doctoral or postdoctoral level in an area of interest to the rehabilitation field;

• Provide a career development program of up to three years of training and direct experience in clinical rehabilitation research (these programs may include activities which contribute to meeting the requirements of advanced degrees and credentials in relevant academic fields); and,

• Assess the value of the research training program through careful documentation of the process, including recruitment, training, and research experiences, as well as through evaluation of the outcomes.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before December 26, 1985, will be considered before the Secretary issues final priorities. All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, S.W., Washington, DC., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: November 21, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-28179 Filed 11-25-85; 8:45 am]

BILLING CODE 4000-01-M

Application for Transmittal of Applications for the National Institute of Handicapped Research and Demonstration Projects in Research Training for Fiscal Year 1986

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Programmatic and Fiscal Information:

The Secretary invites applications for new Research and Demonstration projects in research training for Fiscal Year 1986 under the National Institute of Handicapped Research. The National Institute of Handicapped Research (NIHR) is authorized to support research and related activities under several program authorities, including a program of Research and Demonstration Projects involving research, demonstration, development, or related activities pertinent to rehabilitation of disabled individuals. Under this program, NIHR has proposed a priority for one or more projects in research training. This proposed priority is published in a separate notice in this issue of the **Federal Register.**

NIHR intends to make awards under this program through cooperative agreements. Each award will be for a period up to 36 months.

NIHR expects to fund approximately three projects to train qualified clinicians in advanced rehabilitation research in medicine and allied health fields, engineering, or related sciences. Prospective applicants should consult the detailed description of this priority published elsewhere in this issue of the **Federal Register** and should submit their applications based on the assumption that this will become the final priority. Funds in these projects may be used to support stipends for clinician-trainees, research costs, and costs of training/supervision.

NIHR expect to make approximately $360,000 available to award approximately three cooperative agreements under this program. It is expected that available funds will support approximately six trainees, and applicants may apply to provide training for one or more individuals. However, these estimates do not bind the U.S. Department of Education to any specific number of awards or to the amount of any award unless that amount is otherwise specified by statute or regulation.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before.

Applications sent by mail must be addressed to the U.S. Department of Education Application Control Center, Attention: (CFDA No. 84.133A-B), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the National Institute of Handicapped Research in 34 CFR Parts 350 and 351.

(b) Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

A Notice of Proposed Funding Priority for this program is published in this issue of the **Federal Register.** Prospective applicants are advised that the proposed annual funding priority is subject to modification in response to public comment, or on the basis of other Department of Education considerations. If any substantive changes are made in the final priority or other requirements for new awards, applicants will be given the opportunity to amend or resubmit their applications.

Application Forms

Application forms and further information are expected to be available about one week from the date of this notice. These may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Office Building, Mailstop 3070-2305, Washington, DC

20202, (Attention: Peer Review Unit), Telephone (202) 732-1207. Deaf and hearing impaired individuals may call (202) 732-1198 for TTY services. Requests should refer to applications for 84.133A-B.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Office Building, Room 3070, Washington, DC 20202, Telephone (202) 732-1138; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

Program Authority: 29 U.S.C. 762.

Dated: November 21, 1985.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

William J. Bennett,

Secretary of Education.

[FR Doc. 85-28180 Filed 11-25-85; 8:45 am]

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