3. Section 143.25 of the Customs Regulations is amended to read as follows:

§ 143.25 Information on entry form.

Each Customs Form 5119–A or, where used, Customs Form 7501 shall contain an adequate description of the merchandise and the item number of the Tariff Schedules of the United States (19 U.S.C. 1202), under which the merchandise is classified.

4. The first sentence of § 143.26 of the Customs Regulations is amended to read as follows:

§ 143.26 Additional copy for Internal Revenue.

An additional copy of the Customs Form 5119–A or, where used, Customs Form 7501, marked or stamped "For Internal Revenue Purposes," shall be prepared for each entry covering cigars, cigarettes, or cigarette papers, or tubes when the entry of those articles is subject to Part 275 of the regulations of the Internal Revenue Service (26 CFR Part 275), and tax is payable to Customs upon release of such articles. * * *

(R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1498, 1624))

Inasmuch as these amendments merely permit an alternative to the present requirements and require no public initiative, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. These amendments shall become effective on July 30, 1976.

VERNON D. ACREE,
Commissioner of Customs.

Approved: July 26, 1976.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.76-22076 Filed 7-29-76;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER J—RADIOLOGICAL HEALTH

[Docket No. 75N-0148]

PART 1000—GENERAL

Subpart C—Radiation Protection Recommendations

SPECIFIC AREA GONAD SHIELDINGS

Correction

In FR Doc. 76-21310 appearing at page 30327 in the issue of Friday, July 23, 1976, the following changes should be made on page 30328:

1. In the first column, last paragraph, in the twelfth line, the word "public" should read "pubic".

2. In the second from the last line in § 1000.50(a)(2) in the third column, the word "public" should read "pubic".

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1303—QUOTAS

Certification of Procurement Quota; Correction

In FR Doc. 76-20080 appearing at page 28514 in the FEDERAL REGISTER of July 12, 1976, the eighth paragraph of the preamble of the final order amending § 1303.12, appearing in the third column of page 28514, is corrected in the twenty-seventh line of that paragraph by deleting the word "filed", which appears immediately after the word "order" and immediately before the word "by", and by inserting in its place the word "filled".

Dated: July 23, 1976.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc.76-22186 Filed 7-29-76;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PART 1952—APPROVED STATE PLANS FOR THE ENFORCEMENT OF STATE STANDARDS

Arizona Plan—Approved Supplements

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 referred to as the Act), for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and Part 1902 of this chapter. On November 5, 1974, a notice was published in the FEDERAL REGISTER of the approval of the Arizona plan (39 FR 39037) and of the adoption of Subpart CC of Part 1952 containing the decision of approval. On May 14, 1975, the State of Arizona submitted supplements to its plan involving developmental changes (see Subpart B of 29 CFR Part 1953). On July 7, 1975, a notice was published in the FEDERAL REGISTER (40 FR 28472) concerning the submission of the supplements to the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) and the fact that the question of their approval was in issue before him. In addition, the State submitted a change in its developmental schedule on January 7, 1976 and two completions to its developmental schedule on May 2, 1976.

2. *Description of the supplements.* The supplements submitted by the State concerned regulations regarding inspections, citations and proposed penalties comparable to 29 CFR Part 1903, recordkeeping and reporting regulations similar to 29 CFR Part 1904, interagency agreements between the designated agency and the Arizona Department of Health Services, the State poster, a revision of the projected expansion of the staffing of the State's program and the Rules of Procedure governing the conduct of hearings concerning contested cases and variances before the Governors' Review Board.

The regulations regarding inspections, citations and proposed penalties provide procedures for the conduct of inspections and the issuance of citations and proposed penalties. These regulations are substantially similar to those provided in 29 CFR Part 1903 except that there were no provisions for the protection of trade secrets.

The regulations concerning recordkeeping and reporting requirements are identical to the Federal Regulations provided under 29 CFR Part 1904. Since the Arizona enabling legislation is applicable to all employers within the State, the State has specifically exempted employers with 10 or fewer employees from the recordkeeping requirements. In addition, the recordkeeping requirements will not be applicable to State and local government agencies until January 1977.

Also included in the supplement are two inter-agency agreements entered into between the Arizona Industrial Commission, which is the designated agency, and the Arizona Department of Health Services. One agreement, entered into on November 7, 1974, provides for laboratory support for the occupational safety and health program by the Department of Health Services. A second agreement, entered into on March 20, 1975, provides that the Department of Health Services will coordinate its responsibilities with the Industrial Commission and provides for mutual assistance in the areas of sanitation and clinical laboratories.

The State occupational safety and health poster, which is to be posted at all covered workplaces in the State, was also submitted. Among other things, the poster contains provisions notifying employees of their obligations and protections under the Arizona Act, their right to request workplace inspections and their right to remain anonymous as a result, their protection against discharge or discrimination under both Federal and State law and their right to file complaints with the Occupational Safety and Health Administration concerning the administration of the State's program.

The projected expansion of the staffing for the State's program has been revised for fiscal year 1976. Although the total number of personnel in the Division of Occupational Safety and Health of the Industrial Commission for this period will be forty (40), rather than the anticipated sixty (60), this meets current Federal staffing requirements for the State.

Finally, the State submitted the Rules of Procedure regarding variances and contests of citations and proposed penalties before the Governor's Review Board.

The supplements submitted by the State on May 7, 1976, concerned the completion of two developmental steps. The universe file for the inspection scheduling system was completed and implemented on March 12, 1976, and an inter-agency agreement was entered into between the Corporation Commission of Arizona and the Industrial Commission for the enforcement of standards for employees of public service corporations on May 7, 1976 and became effective on May 10, 1976.

3. *Issues*. Interested persons were afforded at least 30 days from the publication of notice of the supplements in the FEDERAL REGISTER to submit written comments or request an informal hearing concerning the supplements. No comments or requests for a hearing were received during the period provided for public comment. However, review of the supplements by the Assistant Secretary discerned some potential difficulties with the Rules of Procedure for the Governor's Review Board and the recordkeeping regulations. Among other things, the Rules of Procedure did not appear to provide for intervention by an outside party with a legitimate interest in the outcome of a hearing and the State Attorney General ruled that a party to a hearing may not be represented by a person other than an attorney. By letters dated October 8, and 20, 1975 and April 15, 1976, from Donald G. Wiseman, Director of the Division of Occupational Safety and Health of the Arizona Industrial Commission, to Barbara Kohan, Project Officer, the State urged that its statute, §§ 23-401(10) and 23-420, Arizona Revised Statutes, adequately provides for the participation of interested parties in contested cases but the State has also provided assurances that if it experiences any difficulties in providing for such participation, it will take appropriate steps to correct such a deficiency. In addition, the State Attorney General, as noted in the October 20, 1975 letter, withdrew his opposition to the provision permitting nonattorneys to represent the participants in a contested case.

4. *Location of the plan and its supplements for inspection and copying*. A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N-3608, 200 Constitution Avenue, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 9470, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102; and the Division of Occupational Safety and Health, Industrial Commission of Arizona, 1601 West Jefferson Street, Phoenix, Arizona 85005.

5. *Decision*. After careful consideration, the Arizona plan supplements described above are hereby approved. However, the Rules of Procedure of the Governor's Review Board will be subject to careful evaluation to determine if outside parties with a legitimate interest in the outcome of a case are given an opportunity to intervene in cases. This decision incorporates the requirements of the Act and implementing regulations applicable to State plan generally.

In accordance with this decision, Subpart CC of 29 CFR Part 1952 is amended as set forth below effective July 30, 1976.

1. Section 1952.353(e) is revised as follows:

§ 1952.353 Developmental schedule.

* * * * *

(e) The submission of legislative amendments to the Arizona Legislature during its 1976 session.

2. A new § 1952.354 is added as follows:

§ 1952.354 Completed developmental steps.

(a) Implementation of the Arizona occupational safety and health program began on March 1, 1975.

(b) Inter-agency agreements between the Arizona Industrial Commission and the Arizona Department of Health Services were finalized on November 7, 1974, and March 20, 1975.

(c) Regulations concerning inspections, citations and proposed penalties and the Rules of Procedure for contests before the Governor's Review Board were promulgated on February 28, 1975.

(d) Recordkeeping and reporting regulations were promulgated on March 1, 1975; however, these regulations will not be applicable to public employers until January 1, 1977.

(e) The universe file system for the inspection scheduling system was completed and implemented on March 12, 1976.

(f) An interagency agreement was entered into between the Corporation Commission of Arizona and the Industrial Commission on May 7, 1976 and became effective May 10, 1976.

(g) In accordance with the requirements of § 1952.10, the Arizona State poster was approved by the Assistant Secretary on July 1976.

(Secs. 8(g)(2), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g)(2), 667))

Signed at Washington, D.C. this 22nd day of July 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-22007 Filed 7-29-76;8:45 am]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER C—PUBLIC RELATIONS

PART 825—AIR FORCE NEWSPAPERS, BASE GUIDES, AND DIRECTORIES

Part 825, Subchapter C of Chapter VII of Title 32, the Code of Federal Regulations, is revised to read as follows:

AUTHORITY: The provisions of this Part 825 issued under 10 U.S.C. 8012.

SOURCE: AFR 190-7, March 1, 1974.

§ 825.1 Purpose.

This part prescribes policy and procedures for establishing and publishing Air Force newspapers. It defines and provides guidelines on the relationship of the Air Force to commercial enterprise publications, and describes services provided by the Air Force News Service (AFNS) and the Office of Information for the Armed Forces (IAF).

§ 825.2 Air Force newspaper.

(a) *Definition*.—An Air Force newspaper is a publication produced at any level of command by personnel assigned to Offices of Information, or through the cooperation of such an office. Its purpose is to provide Air Force news and information not immediately available from other sources to military and civilian members of the Air Force and their families at specific locations.

(b) *Types of newspapers*.—There are two types of Air Force newspapers—official and unofficial. (See §§ 825.8 and 825.9.) Air Force civilian employee newspapers and those published by or for Air National Guard and Air Force Reserve units are considered Air Force newspapers, but publication produced by or for members of the Civil Air Patrol, the AFROTC, and sundry fund activities or private associations such as wives' clubs are not. Opinions expressed in Air Force newspapers do not necessarily reflect the official views of the United States Air Force. This will be stated in their mastheads.

(c) *Official newspapers*.—These are financed by appropriated or nonappropriated funds. Official newspapers will not carry commercial advertising.

(1) Appropriated fund newspapers are subject to printing and duplicating regulations (AFR 6-1) and certain other limitations outlined in this part. They may be published with appropriated funds when approved by HQ USAF, and when funds are available and programmed by the major command headquarters concerned. (See § 825.10.)

(2) Nonappropriated fund newspapers are subject only to the limitations prescribed in this part and are not subject to printing and duplicating regulations.

(d) *Unofficial newspapers.*—These are commercial enterprise newspapers published under written agreement by civilian concerns exclusively in the interest of Air Force personnel of a particular base or organization, at no cost to the U.S. Government. A commercial enterprise newspaper is similar to an official newspaper except that it is published at no cost to the Government.

(e) *Description of Air Force newspapers.*—(1) An Air Force newspaper usually resembles a civilian newspaper of either tabloid or standard size, normally about 11½ inches by 17 inches for a tabloid, and 16½ inches by 22 inches for a standard-size newspaper. Smaller units often publish stencil-reproduced newspapers on standard or legal-size paper. The front page, exclusive of the nameplate, may include both written and illustrative copy. News sheets and news bulletins, which may be used when newspapers are not readily available, are considered Air Force newspapers.

(2) The provisions of this part apply to news magazines when they serve as Air Force newspapers and so state in their masthead. Although there are no restrictions on the use of magazine formats, the Air Force recommends base newspapers follow the format described above for reasons of economy.

(f) *Comic and feature supplements, base guides, and yearbooks.*—(1) A commercial enterprise comic or feature supplement consists of comic strips, cartoons, and features intended for a military audience. It may be distributed as an insert in official or unofficial newspaper provided requirements of this part are met.

(2) A commercial enterprise base guide or directory, usually published annually, is a guide or directory to an Air Force installation and adjacent community and geographical area. It is published without cost to the U.S. Government. (Guidelines for support authorized for base guides, directories, or orientation pamphlets produced by nonappropriated funds are in AFRs 6-1 and 34-67).

(3) Yearbooks are memento-type publications which, through the use of photographs and narrative, describe the makeup of a particular organization. They are commercial enterprise publications which are supported from advertising revenue and purchase of the book by individual members of organizations concerned. Distribution through official channels is not authorized, except as required for review or approval.

§ 825.3 Authorization to establish newspapers.

(a) *Funding the newspaper.*—Air Force organizations and installations are authorized and encouraged to establish and maintain newspapers as stated in this part. Appropriated or nonappropriated funds may be used to publish a newspaper when this need cannot be met by an unofficial commercial enterprise newspaper published at no cost to the U.S. Government. Appropriated fund expenditures are authorized to support the Air Force Internal Information program.

(b) *Allocation of funds.*—Appropriated and nonappropriated funds will not be mixed to pay the costs of publishing any one issue of a newspaper. However, appropriated and nonappropriated funds may be combined to cover the overall annual costs of publishing a newspaper, as long as they are used to separately fund specific issues of the newspaper. For example, the first 40 issues of a newspaper could be supported by appropriated funds and the remaining 12 from nonappropriated funds, or in any other similar combination.

(c) *Commercial enterprise newspaper costs.*—Appropriated funds may not be used to pay any part of the costs of publishing a commercial enterprise newspaper. Costs involved in the preparation and delivery of copy to a commercial enterprise newspaper are those incurred in the normal functions of an Information office, and are not costs connected with the publishing of a newspaper.

(d) *Use of Air Force personnel.*—Military and civilian personnel paid from appropriated funds may serve in any editorial capacity for official Air Force newspapers supported by appropriated or nonappropriated funds.

(e) *Use of inserts.*—An official paper will not be distributed as an insert in a commercial enterprise newspaper; nor will a commercial enterprise newspaper be distributed as an insert in an official paper. However, a commercial enterprise comic or feature supplement with commercial advertising may be distributed as an insert in an official newspaper provided:

(1) Fair and equal opportunity is provided for responsible persons or organizations to compete for the privilege as provided in § 825.9(c).

(2) The front page of the supplement carries a statement as required in § 825.9(k)(4), and each succeeding page carries a statement in similar type, to the effect that the appearance of commercial advertisements in the supplement does not constitute Department of the Air Force endorsement of the products or services advertised.

(f) *Purchasing Air Force newspapers.*—Nonappropriated funds may be used to buy copies of commercial enterprise base newspapers for distribution to Air Force personnel when the commander feels there is insufficient revenue from other sources to make this type of publication feasible, and approval has been granted by SAF/OI. Approval is granted only when continual publication of the newspaper is considered essential to the morale of the unit concerned and the publisher has conclusively demonstrated his lack of revenue.

§ 825.4 Who is responsible for Air Force newspapers.

(a) The Director of Information, Office of the Secretary of the Air Force (OSAF), will exercise general supervision over Air Force newspapers and other publications covered in this part in keeping with policies established by the Secretary of the Air Force.

(b) Commanders of major commands are responsible for administrative support and financing of official newspapers, and for approving and monitoring Air Force newspapers, base guides, directories, and yearbooks published in their commands. They will establish procedures for reviewing issues of base newspapers to insure compliance with Air Force standards and directives, and review and maintain a current file of agreements between commanders and publishers of commercial enterprise base newspapers and base guides to insure compliance with Air Force directives.

(c) Local commanders will supervise Air Force newspapers published in their commands and monitor commercial enterprise publications with which they have agreements to insure compliance with Air Force and major command policies and directives.

§ 825.5 General policies for Air Force newspapers.

(a) The intent of this part is to insure that the military and civilian personnel on each Air Force base or installation be served by an Air Force newspaper. The content of the newspaper will provide for equitable consideration of both host and tenant units, and will serve the mutual interest of all military and civilian personnel and their dependents at the installation. Normally, it is not practicable for an installation of fewer than 500 assigned military and civilian personnel to publish a newspaper. Meeting the newspaper needs of such small organizations should be the responsibility of their parent organizations. However, this part does not prohibit the commander of a small organization from publishing a newspaper or unit news sheet from within the unit resources.

(b) The functions of an Air Force newspaper are to:

(1) Increase knowledge and understanding of the Air Force by providing detailed coverage of information of interest and value to Air Force personnel, and

(2) Afford the commander an Internal Information channel through which he may provide information on subjects of particular benefit to the Air Force, the command, intermediate echelons, and his unit. As a house organ, the newspaper constitutes a tool of management which provides an employee communication channel to aid the commander in carrying out the aims of the Air Force Internal Information Program. (See AFR 190-18.)

(c) Follow this priority sequence for meeting the costs of publishing a newspaper:

(1) Commanders should first try to satisfy newspaper requirements through use of commercial enterprise publications.

(2) Where the commercial enterprise method is not feasible, commanders are authorized appropriated fund expenditures to publish Air Force newspapers.

(3) When the above methods of publishing a newspaper are not adequate, nonappropriated funds may be requested locally.

(d) Normally, Air Force newspapers will be issued once a week. However, publication once every two weeks or monthly is authorized if considered by the commander to be in the best interest of the organization.

(e) Air Force newspapers are classified as follows:

(1) Class I—Multilith/mimeograph newspapers.

(2) Class II—Official letterpress/offset newspapers.

(3) Class III—Unofficial letterpress/offset newspapers.

(4) Further subdivisions are provided in classes II and III for purposes of the annual Air Force newspaper contest (see § 825.19).

(f) Newspaper publication activities are assigned to the organization's Office of Information, except for those published by dependents' organizations, open messes, and similar groups. The latter should be provided with advice, assistance, and news releases.

(g) The principles of operation of official newspapers are comparable to those governing civilian commercial newspapers published in the United States. Commanders occupy a status comparable to that of civilian publishers and are responsible for the publication of newspapers within their commands.

§ 825.6 **Editorial policies.**

Every effort must be made to provide information which is compatible with the concept of the Air Force newspaper as the house organ of the commander and to further Air Force information objectives. One of the most effective means of achieving this aim is through actionline columns in which the commander responds personally to questions and complaints about a variety of topics. The selection and writing of news and other articles are governed by the following general policies:

(a) Make news coverage as complete as practicable. The writing should be factual, objective, and as timely as possible. Articles should be based on reports provided by members of the staffs of individual Air Force newspapers, the Air Force News Service (AFNS), command news services, the American Forces Press Service (AFPS), official releases, and commercial press associations where authority to use them exists.

(b) Editorial and news policies of Air Force newspapers serve to increase knowledge and understanding of the Air Force. There must be no appeal to emotions detrimental to either the interests of the Nation or any Government agency.

(c) Newspapers must distinguish between facts and opinions which may be part of a news story. If opinion is expressed, the person or source must be identified.

(d) Editorial opinion must be identified as such. Editorials originated locally must reflect the policies of the commander and be directed to the interest and welfare of the Air Force.

(e) Newspapers are subject to the security regulations governing Air Force activities. News or information which would adversely affect the security of the nation, endanger the safety of personnel or undermine discipline will not be disclosed. This shall not be construed to permit the calculated withholding of unfavorable news.

(f) Editors must conform to the principles of good taste, the laws governing libel and copyright and postal regulations (see § 825.17), and policies of the Air Force. Care should be taken when using material on ideological subjects, world affairs, U.S. foreign policy, and nuclear weapons and missiles to insure the material is consistent with national policy.

(g) Orders and directives are treated according to their straight news value or departmentalized as official documents published for the information of all concerned.

(h) Topical news about base exchange activities, events, and policies is encouraged. In no case will comparisons be made of prices, goods, and services available to service personnel through base exchanges in contrast to those available on the civilian economy. The same policy applies to commissaries.

(i) Labor union news which might provoke controversy; that is, editorial endorsement or criticism of union actions, recruiting, or discouraging union membership should be avoided.

(j) Book reviews may be used if written objectively so there is no implication of endorsement by the Department of the Air Force or any element of the Department of Defense.

(k) Air Force newspapers may provide space for free and noncommercial listing of personal property or services offered by, and for the convenience of, local base or unit personnel without regard to race, creed, color or national origin.

(l) All Air Force newspapers carry a front page dateline which includes the volume and issue number, geographical location of the installation (if not prohibited by security limitations) and issue date.

(m) Air Force photographs carry the credit line "U.S. Air Force Photo." Credit may be given a photographer by name, grade, and editorial position in an official newspaper. The name and grade of the photographer may be used in a commercial enterprise newspaper if there is no inference he is a member of the staff.

(n) Use AFP 190–42, Armed Forces Newspaper Guide, and AFP 190–38, Armed Forces News Style Guide as the official guides for publishing base newspapers. Internal information policy is in AFM 190–9, Information Policies and Procedures.

§ 825.7 **Political campaign news and advertising.**

Air Force newspapers published in the 50 states will not contain political campaign news, since this news generally is available in local civilian newspapers. However, it is appropriate for the Air Force to make sufficient current campaign information available to personnel stationed outside the United States to enable them to understand the political scene and vote intelligently. Political campaign news coverage will be governed by the following policies.

(a) Air Force newspapers, news sheets, or news bulletins published in oversea commands where civilian-published, English-language newspapers generally are not available may include factual political campaign news obtained from commercial news services.

(b) Presentation of political campaign news in Air Force newspapers should be impartial and nonpartisan. Great care will be exercised in maintaining a well-balanced handling of materials by, about, or originating from opposing parties or candidates.

(c) Air Force newspapers will not contain editorials dealing with candidates or issues and will not include editorial comments, criticism, analyses, or interpretations of political campaign news.

(d) Air Force newspapers will carry information during election years about voting laws of the various states and territories and editorials supporting the Federal Voting Assistance Program. They may also carry nonpartisan appeals from national leaders for military personnel and their dependents to study candidates and issues and then exercise their right to vote.

(e) No Air Force newspaper will conduct a political opinion poll, survey, or straw vote. Commanders entering into an agreement with a civilian enterprise publisher will insure that such a restriction is part of the written agreement.

(f) Political advertisements will not be carried in Air Force newspapers.

§ 825.8 **Official Air Force newspapers.**

(a) Official newspapers will contain no commercial advertisements inserted by, or on behalf of any private individual, firm, or corporation; neither will they contain any material which implies that any military department or the Department of Defense endorses or favors a specific commercial product, commodity or service. However, this does not prohibit use of news and announcements concerning entertainment units affiliated with commercial enterprises which have been approved for the Armed Forces Professional Entertainment Program overseas. Such news items should not be set apart or be in a form similar to paid advertisements.

(b) Official newspapers do not subscribe, even without cost, to commercial or feature wire services whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(c) Only one official base newspaper will be published to serve the total personnel of an installation.

(d) The statement of publication masthead of official Air Force newspapers will be easily identifiable and will include the names of the officer in charge, editor, members of the editorial staff, and the following statement:

"The (name of newspaper) is an official class (I or II, as defined in this regulation) Air Force newspaper, published (frequency of publication) on (day of week or, in the case of a monthly or semimonthly, the actual date) for the personnel of (name of Air Force installation), (name of MAJCOM) at (name of geographical location, if not prohibited by security limitations, and post office address). Opinions expresed herein do not necessarily represent those of the USAF.

§ 825.9 Unofficial newspapers.

(a) *General information.*—Commanders are authorized to enter into agreements for commercial enterprise publications for dissemination of Air Force news and information to units under their command. The content of such publications should represent the aim and purpose of the Air Force Internal Information Program. Invited proposals for publishing commercial enterprise publications may specify those categories of news, comics, features, and factual information to be included.

(b) *Selecting a publisher.*—In selecting a commercial enterprise publication for distribution within his control, each commander must afford a fair and equal opportunity to any responsible bidder who may wish to submit a proposal to publish such a publication.

(1) The best obtainable offer and price per copy, if any, must be considered if a charge from nonappropriated funds is expected.

(2) The commander considers the competence, reliability, and responsibility of the prospective publisher.

(3) In cases where a new proposal provides essentially the same service as that provided by the current publisher, consideration should be given to the quality of service rendered by the current publisher.

(4) The contract period is for a period not in excess of two years.

(c) *Distribution.*—(1) Commercial enterprise publications printed under such agreements may be distributed through official channels without cost to the publisher, provided this does not require additional expenditures of appropriated funds. With the concurrence of the commander concerned, the publisher of such a commercial enterprise publication may arrange for direct distribution to intended Air Force readers.

(2) A commander may afford the opportunity to reputable publishers to sell or give away publications at the activity he commands, except as provided by AFR 35-15. Such publications may not be distributed through official channels nor be distributed directly to intended readers without his concurrence.

(d) *Agreement between Commander and Publisher.*—(1) Installations having selected commercial enterprise publications for distribution to Air Force personnel must maintain current written agreements with the civilian publisher (AFM 190-9, fig. 2-1). Such agreements are drawn up by the local commander and the civilian publisher. Copies of these agreements are forwarded for file to MAJCOMs.

(2) A military installation is limited to one commercial enterprise publication in each category, except that a commercial enterprise newspaper may carry as an insert or separate inserts, comic and feature supplements.

(3) A separate agreement is not required for a commercial enterprise comic or feature supplement intended for distribution with a commercial enterprise newspaper if the contract with the newspaper publisher stipulates that any such supplements have the prior approval of the commander.

(e) *Problems with the publisher.*—The information officer should meet on a frequent and regular basis with the publisher to discuss and resolve problems which arise in the publishing agreement. If necessary, complaints of the commander or information officer concerning the publication or distribution of an unofficial commercial enterprise publication are sent in writing to the publisher with an information copy forwarded through channels to Secretary of the Air Force, (SAF/OIIB), Wash. DC 20330. Also, MAJCOM and SAF/OIIB are informed in advance whenever a commercial enterprise publication agreement is terminated before the full term of the agreement. State reasons for action in full.

(f) *Commander's responsibilities:*

(1) The commander responsible for the contract with a civilian enterprise publisher does not exercise control over the overall operation of the newspaper. However, the commander concerned may suggest the positioning of editorial matter and military photographs within the newspaper.

(2) In addition, he has the authority and responsibility to prohibit distribution within his command of any issue of the newspaper he considers unlawful or prejudicial to good order and discipline or not in the best interest of his command.

(3) He also may prohibit distribution of a commercial enterprise publication carrying an advertisement which he determines would interfere with the successful performance of his mission. In the context of an advertisement, this would take into account the local climate, the content of the proposed advertisement, and the identity and reputation of the requesting organization, among other factors. The commander concerned must make the decision for approving distribution on his installation of a newspaper containing an advertisement which promotes a situation involving potential riots or other civil disturbances, or if the distribution of such an advertisement would present a clear danger to loyalty, discipline, or morale of his personnel.

(4) Commanders should acquaint publishers with these criteria to avoid the acceptance of advertising which would be detrimental to the accomplishment of the military mission or in any way imply condonement of or indorsement of such activity. If such a ban is invoked the commander gives written notice to the publisher informing him of such action, and stating what he must do to have the prohibition lifted. Inform SAF/OIIB as directed in (e) above.

(g) *Nameplate.*—(1) A commercial enterprise publication must not state that it is an official publication of the Air Force, nor use the name, seal, insignia, or emblem of the Air Force, command, base, or unit in any manner that might imply it is an official Air Force publication. Effective with the date of this regulation, the name of the base or activity may not be used within the nameplate of any such new commercial publications. The name of the base may appear in the nameplate of commercial enterprise publications already in existence at the time of publication of this regulation if the words "Air Force Base" or "AFB" are not included.

(2) The nameplate of commercial enterprise newspapers should be easily identifiable and should include the name of the newspaper, the volume and issue number, the geographical location of the installation (if not prohibited by security limitations), and the day of the week published. The following statement in 8-point bold, if available, but in any case no smaller than the main body type, is printed on the front page or cover of each commercial enterprise newspaper, supplement, or insert:

The (name) is an unofficial newspaper published (frequency of publication) in the interest of personnel at (name of Air Force installation) of (major command). It is published by (name of publisher), a private firm (or individual), in no way connected with the Department of the Air Force. Opinions expressed by publishers and writers herein are their own and are not to be considered an official expression by the Department of the Air Force. The appearance of advertisements, including supplements and inserts, in this publication does not constitute an endorsement by the Department of the Air Force of products or services advertised.

(h) *Editorial contributions by Air Force personnel.*—Air Force military personnel on extended active duty and Air Force civilian personnel may not serve on the editorial staff of a commercial enterprise publication or authorize their names to be carried in its masthead. Such personnel may not be assigned to duty at the premises of the publication or perform any function that is under the direction or supervision of the commercial enterprise publisher or any of his officials or employees. This policy does not prohibit news releases through normal channels, nor does it prohibit contributions by military and civilian personnel of articles or military photographs, with by-lines or credit lines, to commercial enterprise publications without reimbursement. No editorial title may be attached to the by-line or credit line, and the material cannot imply that the author has an official position on the publication.

(i) *Availability of Air Force news.*—All news and information made available by the Air Force to a commercial enterprise publication will be made equally available to any other publisher who requests it.

§ 825.10 Unofficial base guides.

(a) *Format.*—The front cover of a commercial enterprise base guide or directory will carry the name of the civilian publisher prominently just above the disclaimer. The word "guide" or "directory", which appears on the front page or cover is preceded by "unofficial" in type at least as large as that in which the word "guide" or "directory" is printed. The format for the guide or directory is designed so that the publication cannot be mistaken for an official guide or directory.

(1) Section 825.24 carries a suggested front cover design showing how this unofficial approach can be achieved. Another design may be used, but it must be equally effective in making plain the unofficial nature of the publication.

(b) *Agreements between Commander and Publisher.*—In addition to the conditions previously set forth in this part, the agreement between the commander and the publisher of the guide or directory must include the following:

(1) Do not include organizational charts or listings of the command in the publication.

(2) Do not include base telephone numbers of personnel, or organizational elements, or the home addresses and telephone numbers of personnel. At the discretion of the commander, emergency and service numbers such as hospital, security police, fire, and an alphabetical listing of personnel may be included.

(3) On one of the inside pages the publication date, the publisher's name, permanent address, and telephone number is shown in the masthead.

(4) Neither the name of the installation, organization, nor a military post office address, may be included in the publisher's letterhead or mailing address.

(5) Reference to base exchanges and commissaries in guides or directories may contain only the location, hours of operation, and listing of services available.

§ 825.11 Unofficial yearbooks.

Unit commanders may authorize publication of base or organizational unofficial yearbooks provided they do not include information determined to be of possible value to a potential enemy. This information includes, but is not limited to:

(a) Detailed biographical data of other than key personnel.

(b) Information on special combat equipment.

(c) Detailed manning and specialties of key combat and support units.

(d) Other detailed air order of battle data.

§ 825.12 Appropriated fund newspapers.

(a) *Requesting appropriated Fund Newspapers.*—To establish an appropriated fund newspaper or to convert a civilian enterprise or nonappropriated fund newspaper to one using appropriated funds, the MAJCOM concerned must first obtain approval of Secretary of the Air Force (SAF/OIIB), Wash DC 20330. Requests for appropriated fund papers must include:

(1) Conclusive justification, showing clearly that commercial enterprise fund support is not feasible.

(2) Statement that funds are available or have been programmed by the MAJCOM.

(b) *Policies.*—(1) An activity must have more than 500 total military and civilian employees to be eligible for an appropriated fund newspaper.

(2) Ordinarily, a ratio of one copy to each three members of the total complement is the maximum number of newspapers which are normally approved. If a greater number of copies is necessary to carry out the newspaper's function, specific and conclusive justification must be submitted with the annual request for appropriated funds.

(3) Appropriated funds may be used for special expanded issues for such occasions as Armed Forces Day, Easter, Thanksgiving, and Christmas (see § 825.15(b)). Annual printing budget requests cover the costs of these special issues and are made concurrently with other budget requests.

(4) Air Force appropriated fund newspapers are items of printing and appropriated printing funds are cited for the cost of contracts for printing services.

(5) Commanders are authorized to contract for newspapers on an annual fiscal year basis.

(6) The commercial enterprise method of publishing a base newspaper should be explored prior to renewing printing contracts for appropriated fund papers.

§ 825.13 Commercial advertising.

(a) To be acceptable for on-base distribution through official channels, no advertising in commercial enterprise publications shall be worded or phrased to give the reader the impression that the Air Force in any way endorses, guarantees, or sponsors any product or service. Advertisements must not imply discrimination against any person because of race, religion, national origin, or sex.

(b) The publisher of a civilian enterprise publication is required, as part of the written agreement, to display the following statement in the publication:

"Everything advertised in this publication must be made available for purchase, use or patronage without regard to the race, creed, color, national origin or sex of the purchaser, user, or patron. A confirmed violation or rejection of this policy of equal opportunities by an advertiser will result in the refusal to print advertising from that source."

(c) Advertisements which appear to be editorials or news stories may be confused as such by readers and should be clearly labeled, top and bottom, as advertisements in a type size equal to text type or larger.

(d) The publisher will request advertisers to observe the highest business ethics and applicable laws in describing goods, services, and commodities, and the terms of sale, including guarantees, and warranties. If credit terms are offered in such advertisements, a clear statement of the total cash price as well as the total cost of credit, including all charges, should be clearly shown in the company's advertisements. If time payments are shown, the number of payments, the amount of each, and the time period should also be shown in order that the reader can easily compute the dollar cost of the loan.

(e) Active-duty Air Force military and civilian personnel are prohibited from soliciting or endorsing advertisements in commercial enterprise publications.

(f) Copy or art provided by the Department of Defense or the Air Force may not be used in commercial advertisements to promote the sale of goods or services offered by the advertiser, except as provided by AFR 190-16.

(g) The unofficial nature of the commercial enterprise publication must be made clear by the publisher to every person or firm solicited for advertising. Any brochure or letter from the publisher to a prospective advertiser must clarify this.

(h) Advertisements must conform to the principles of good taste, and the amount of space in each issued used for advertisements must not detract from the primary purpose of the publication which is to provide news and information of particular interest to Air Force military and civilian personnel.

(i) The monthly ratio of advertising copy to news copy in commercial enterprise newspapers, including inserts and supplements, should average:

(1) 4-8 page newspaper, 50 percent advertisements

(2) 12-16 page newspaper, 55 percent advertisements

(3) 20-24 page newspaper, 60 percent advertisements

(4) More than 24 page newspaper, 65 percent advertisements.

§ 825.14 Printing and production standards for official papers.

Official Air Force newspapers must be printed commercially, except in locations where commercial sources are not available. At these locations, Air Force printing plants or duplicating facilities may be used if existing production facilities are adequate to provide for newspaper production in addition to all official business. The requirement to print a newspaper is not justification for purchasing additional printing equipment.

(a) The following weekly maximum allowances for paper are established for official Air Force newspapers:

Base population:	*Total (in square inches)*[1]
Less than 1,000	374
1,000 to 5,000	748
5,000 to 10,000	1,496
10,000 and up	2,992

[1] Paper allowance per copy per week.

(1) Base population includes both military and civilian personnel. The term "civilian personnel" includes, classified civilian employees, DAF employees, indigenous employees, and employees paid from nonappropriated funds.

(2) Newspapers issued twice monthly may increase their paper allowance in proportion to the weekly allowance. For example, a newspaper issued twice a month for a base with a population of less than 1,000 may have a paper allowance of 748 square inches. To meet local printing and paper problems, newspapers may use various page sizes as long as they remain within the maximum limit of paper allowance authorized.

(b) Specifications prepared for printing of official Air Force newspapers must be written to obtain maximum economy consistent with the needs of the Air Force. Use the following Congressional Joint Committee on Printing standards when specifying paper stocks for official Air Force newspapers.

(1) Papers produced by letterpress are printed on standard newsprint, natural shade, not to exceed 64-pound stock (weight basis 24'' x 36''—1,000) as specified in JCP Specification A10.

(2) Papers produced by the offset process are printed on offset book, not to exceed 100-pound stock (weight basis 25', x 38''—1,000), as specified in JCP Specification A60.

(c) The use of illustrations is encouraged, but their use must not exceed 50 percent of the total weekly space allowance. Illustrations or material supplied without cost to the newspaper in matrix or photographic form are not chargeable against the illustration space limitation.

§ 825.15 Standards for use of appropriated funds.

In addition to those standards prescribed in § 825.14, all Air Force newspapers printed from appropriated funds are subject to the following:

(a) Air Force newspapers printed from appropriated funds are limited to one color (black), except that a maximum of four issues per year may be published in one additional color for Easter, Thanksgiving, Christmas, Armed Forces Day, or similar occasions. Such special issues may be printed with one additional color as an overprint, a separately printed cover, or on a double-page center section. Black is considered a color when determining the use of two colors in Air Force newspapers.

(b) Armed Forces Day issues may be printed in twice the normal number of pages and three times the normal number of copies. Any combination of these limits is permissible. For example, an issue may have the normal number of pages and be published in six times the number of copies.

§ 825.16 Editorial manning standards.

(See AFM 26-1 and AFM 26-3, Volume II.) Because the base newspaper is recognized primarily as a tool of management in the field of employee communications, the commander and the information office should use it as the basic medium of the Internal Information Program. Close and continuous attention should be given to this medium, and care should be taken to assign highly qualified presons to prepare its editorial matter. Because publishing schedules are fixed and copy deadlines must be met, those editorial personnel assigned the responsibility for meeting publishing deadlines are normally excused from extra duties that would interfere with base newspaper production.

§ 825.17 Mailing newspapers.

(a) Air Force newspapers containing no commercial advertising may be mailed under the "Postage and Fees Paid" indicia (see AFM 10-5). Newspapers not meeting these criteria are authorized for mailing to addresses in § 825.18, and to U.S. Government addressees who need to receive copies for administrative purposes. Newspapers sent through the mails must be folded securely and may be forwarded either by franked label or enclosed in an envelope or wrapper.

(b) Air Force newspapers transmitted through the mails must conform to the provisions of Section 1302 of Title 18, the United States Code. Specifically, avoid mention of lotteries or games of chance of any kind. The penalties for mailing newspapers containing such information are fines up to $1,000 or two years imprisonment.

(c) When mailing newspapers, consider both needed speed of delivery and economy in determining the type of service used. For example, airmail should not be used when military official mail (MOM), first-class service, or third-class service would provide delivery to addressees within acceptable time limits. Personnel making the determination should:

(1) Be aware of transit times and costs of moving various classes of mail (see AFM 10-5, attachment 1).

(2) Carefully weigh the timely news value against cost of mailing.

(3) Monitor the mailing to insure the appropriate type of mail service is being used and that newspapers are properly packed and addressed (AFM 10-4 and AFM 10-5).

(4) Apply for bulk third-class rate if each mailing consists of at least 50 pounds or 200 identical newspapers.

(5) Use first-class mail to send single addressed newspapers if the total weight of each item is one ounce or less.

(6) Use third-class mail to send single addressed newspapers if the total weight of each item exceeds one ounce.

(7) Identify first or third-class matter by placing the words FIRST-CLASS or THIRD-CLASS on each piece, preferably in a position above the address and below the Postage and Fees Paid indicia. Additionally, newspapers addressed to oversea military units must be endorsed military official mail (MOM).

§ 825.18 Distribution of Air Force newspapers.

(a) Issues of each Air Force newspaper are distributed upon publication date as follows:

(1) One copy to Secretary of the Air Force (SAF/OIIB), Wash DC 20330.

(2) If subscribing to American Forces Press Service, two copies to American Forces Press Service, 1117 N. 19th Street, Arlington, Va. 22209.

(3) Copies required by MAJCOM offices of information for review.

(b) Newspaper distribution lists must exclude persons or organizations not affiliated with the base of origin and those without official interest in the publication. Exception may be made when a written request is received, and when it is determined to be in the best interest of the Air Force to include the requestor on the distribution list. Keep copies of such requests on file. Commercial newspaper agreements should, whenever possible, include a provision requiring the publisher to mail newspapers to nongovernment addressees.

(c) Revise newspaper distribution lists at least once a year to insure they are up to date and accurate.

(d) All requests for Air Force newspapers by individuals or organizations unrecognized by the base information officer or the commander as having a legitimate requirement are forwarded for action to Secretary of the Air Force (SAF/OIIB), Wash DC 20330.

(e) Answer requests for Air Force newspapers by foreign diplomatic missions or attaches substantially as follows:

Your interest in (name of newspaper or subject) is appreciated. However, the United States Air Force has established a central office to handle requests of this nature.

Accordingly, your request has been forwarded for action to HQ USAF/CVI Wash DC 20330. Forward a copy of the request to CVI with information copies to the information officer of the MAJCOM concerned.

§ 825.19 Annual Air Force newspaper contest and awards.

(a) *Period covered.*—The contest is an annual worldwide competition among Air Force newspapers published under the provisions of this regulation. Contest periods are from 1 January through December 31. Awards recognize newspaper effectiveness.

(b) *Classes.*—(Note: Class II and III, because of the comparativetly large number of newspapers published within them, have been subdivided into categories to provide the most equitable representation and recognition possible.)

(1) Class I—Multilith/mimeograph newspapers.

(2) Class II—Official letterpress/offset newspapers.

Category A—4 to 8 pages (annual average).

Category B—10 pages or more (annual average).

(3) Class III—Unofficial offset/letterpress newspapers.

Category A—4 to 8 pages (annual average).

Category B—10 to 16 pages (annual average).

Category C—20 or more pages (annual average).

(4) Class IV—Photographic feature (published in official or unofficial newspapers).

(5) Class V—Special edition newspaper (official or unofficial).

(c) *Awards.*—(1) Awards consist of plaques for first-, second-, and third-place winners in each of the classes or categories above. The plaques for permanent retention by the winning newspapers bear the signature of the Secretary of the Air Force, Chief of Staff, and Director of Information. Plaques are funded from appropriated funds.

(2) The Chief of Staff presents the plaques to editors or representatives of newspapers winning first place in each class or category as described in para 18b. This ceremony takes place in the Pentagon, usually in March.

(3) Second- and third-place plaques are mailed to MAJCOMs for presentation.

(4) A single winner from each class in the annual Air Force Newspaper Contest is selected by the judges and submitted as the Air Force entry in Department of Defense newspaper contests.

(d) *Eligibility.*—Air Force newspapers which meet the requirements and definitions stated in this regulation are eligible to compete.

(1) MAJCOMs submit all entries.

(2) Submissions are limited to one entry in each class or category.

(3) For Classes I, II, and III, forward one copy of each of three issues published within the contest period. SAF/OIIB announces the dates of the three issues to be judged prior to the close of the contest period. For Class IV, Photographic Feature, forward one entry from any issue published during the contest period. For Class V, forward any issue specifically designated as a Special Edition newspaper published during the contest period.

(4) In the cover letter accompanying entries, list each class or category, the name of the entry, and the base. Enter the word "negative" if no entry is submitted in a given class/category.

(5) Provide a fact sheet including the following information with each entry:

(i) MAJCOM, location, and unit.

(ii) Name of entry.

(iii) Press run, estimated readership.

(iv) Name, grade, and Social Security Account Number (SSAN) of editor or individual responsible for contest issues. (This permits recognition of work performed even though an editor may have transferred.) If the responsible editor has been transferred, name, grade, and SSAN of the present editor must also be included.

(6) Send entries to Secretary of the Air Force (SAF/OIIB), Wash DC 20330; to arrive no later than the first week of January.

(e) Judges and Judging Criteria. Professional journalists and industrial editors serve as judges. Judging is based on:

(1) Support of Air Force information objectives.

(2) Use as a management tool by the commander.

(3) Journalistic qualities.

§ 825.20 Air Force newspaper report.

Submit periodic reports on Air Force newspapers as stated in AFR 190-18.

§ 825.21 Newspaper files.

Newspapers are maintained in annual blocks and a new file established on the anniversary date of initial publication. Back issues of the newspaper should be permanently bound and retained for base reference purposes. Disposition is stated in AFM 12-50, table 190-1.

§ 825.22 Air Force News Service (AFNS).

AFNS is an activity of the Office of Information, OSAF. Though use of AFNS is not mandatory, information officers and editors are urged to give it maximum use. AFNS material is prepared and produced with careful attention to the support of Air Force objectives.

(a) *Services provided.*—(1) Air Force news emanating from HQ USAF is mailed weekly direct to all Air Force newspapers. In addition, AFNS provides news stories on MAJCOM activities, feature stories and editorials, a photo service, and articles of interest to wives. Coverage includes information on national events having important Air Force aspects, Air Staff actions of general interest (including personnel matters, housing, regulations, and policies), and material explaning basic Air Force missions and doctrines. Coverage does not include general world or national news, but may include articles or editorials on world affairs of special significance to Air Force members. Periodically, AFNS contains Editor's Notebook, a special feature carrying advice, suggestions, and Air Force newspaper policy for editors. Attention is directed to subjects of top priority in the Air Force and means of developing stories at the local level. Special critiques are available upon request.

(2) News of greatest importance is electrically transmitted to MAJCOMs for retransmittal to base editors.

(b) *Who may receive AFNS material.*—All newspapers published by or for Air Force personnel are eligible to receive material prepared by AFNS. AFNS is furnished to commercial enterprise newspapers only through the base information officer concerned. Forward requests for AFNS distribution through command information channels to Secretary of the Air Force (SAF/OHB), Wash DC 20330.

(c) *Use of AFNS material.*—(1) Normally, AFNS provides material of primary interest to Air Force newspapers. However, the information in AFNS material can and should have a wider use than distribution solely through newspapers. Information officers should examine each AFNS mailing for wider application and use through such media as Air Force radio and television stations, daily bulletins, Commander's Call programs and bulletin boards.

(2) Material of interest to Air Force wives should be passed on by the information officer to the editor of the base wives' club publication, whether the material is used in the base newspaper or not.

(3) Editors are encouraged to rewrite AFNS material to adapt it more closely to the interest of the installation audience, through the use of localized leads and additional local information. Use of AFNS credit lines is encouraged.

(4) Commands may establish news services to provide information of specific interest to command personnel, but such services must not duplicate material provided by AFNS.

§ 825.23 Office of Information for the Armed Forces (IAF), Department of Defense.

(a) *Services provided.*—Upon request, this office provides the following press materials and services to Air Force newspapers:

(1) *American Forces Press Service.*—A clipsheet, published weekly, carrying text and art which may be included in Air Force newspapers. Illustrations appearing in the press service are provided upon request in matrix form for letterpress newspapers; in electronically cut stencils for mimeograph newspapers; and in preprinted paper masters for multilith-duplicated newspapers. Photo-offset newspapers may use the illustrations as they appear in the press service.

(2) *Commanders Digest.*—A publication containing Department of Defense policies, and seat-of-government news and information. Reproduction of contents is authorized.

(3) *Armed Forces Newspaper Guide.*—A manual for personnel performing editorial duties on Air Force newspapers.

(4) *Armed Forces News Style Guide.*—A guide designed to help Air Force newspaper staffs standardize their style by providing guidance on such matters as abbreviations, punctuation, and spelling.

(5) *Advice to editors.*—Advice concerning the organization and operation of service newspapers and detailed critiques of individual Air Force newspapers are available upon request. (Forward requests for critiques through MAJCOMs.)

(b) *Who may receive IAF material.*—(1) All Air Force newspapers are eligible to receive material prepared by IAF. However, a commercial enterprise newspaper should be served with IAF material through the information officer of the installation it serves. Commercial enterprise newspapers may not use copyrighted material without approval.

(2) The following nonpublishing activities may be provided with IAF press material upon written justification of their need for the service. Requests should be addressed to Secretary of the Air Force (SAF/OIIB), Wash DC 20330.

(i) Headquarters having a policy supervisory interest in Air Force newspapers, including headquarters of MAJCOMs, numbered air forces, and air divisions.

(ii) Air Force radio and television networks and stations.

(iii) Isolated detachments at which Air Force newspapers are not readily obtainable and whose parent organizations do not publish a unit newspaper.

(3) Nonpublishing organizations not noted in (b)(2) above forward requests for IAF materials to MAJCOMs.

(c) *Use of IAF materials.*—(1) Materials may be edited or revised by editors of Air Force newspapers as required by newspaper space limitations or as advisable for local appeal.

(2) Material must not be used in commercial advertising in any newspaper.

(d) *How to apply for IAF materials.*—(1) Requests for IAF material must be forwarded through command channels to the MAJCOM information officer for approval. The command information officer forwards approved requests directly to the Office of Information for the Armed Forces, OASD (M&RA), Attn: American Forces Press Service (AFPS), Washington DC 20305.

(2) Include the following in each request:

(i) Name and mailing address of newspaper.

(ii) Method and frequency of publication.

(iii) Number of copies printed.

(iv) Whether newspaper carries commercial advertising.

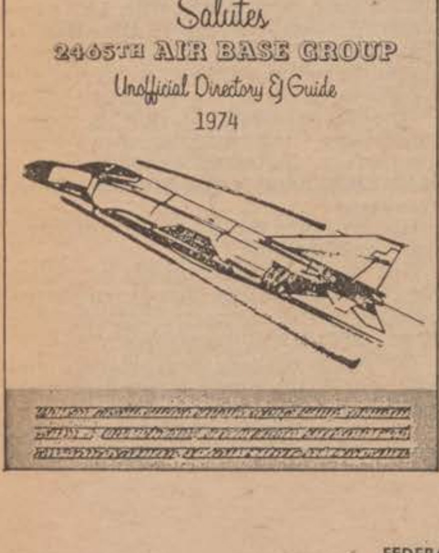
(v) Whether mats or precut stencils are desired.

(3) An official Air Force newspaper receiving materials must forward one copy of each issue to the AFPS. Issues of commercial enterprise newspapers must be forwarded in one copy by the information officer having normal liaison with the publisher.

(4) Air Force newspaper editors and information officers are encouraged to provide AFPS with news releases and photographs relating to their activity.

(e) Department of Defense Awards. The Assistant Secretay of Defense (Manpower and Reserve Affairs) presents annual Department of Defense Thomas Jefferson awards to newspapers of active military units or installations for professional excellence and outstanding achievements in the accomplishment of their mission. These awards for Air Force newspapers are based on nominations submitted by the Department of the Air Force.

§ 825.24 Sample format—unofficial directory and base guide.



The following statement must appear on the cover:

Published by (name of publisher), a private firm (or individual), in no way connected with the Department of (insert appropriate military department). Opinions expressed by the publishers and writers herein are their own and are not to be considered an official expression by the Department of (insert appropriate military department). The appearance of advertisements in this publication does not constitute an endorsement by the Department of (insert appropriate military department) of the products or services advertised.

NOTE.—If a format similar to the one shown above is used for a civilian enterprise area guide, any neighboring city, town, or area may salute a military activity. In the title on the front cover, the name of the military activity shall be subordinate to that of the city, town or area. On the inside front cover or just after the title page, the guide may carry pictures of city, town or area officials, along with messages from them to base or post personnel and visitors. On subsequent pages the guide may carry pictures of military officials. These may be accompanied by biographical information but not by messages from these officials.

By Order of the Secretary of the Air Force.

JAMES L. ELMER,
Major, USAF, Executive, Directorate of Administration.

[FR Doc.76-22043 Filed 7-29-76;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 209—ADMINISTRATIVE PROCEDURE

Shipping Safety Fairways and Anchorages

On May 13, 1976 there was published in the FEDERAL REGISTER (Vol. 41, No. 94, page 19649) a notice of proposed rulemaking to revise 33 CFR 209.135 paragraph (d)(29) which establishes the Southwest Pass (Mississippi River) Anchorage Area. Interested parties were given the opportunity to submit comments or objections on or before 14 June 1976.

No comments have been received and accordingly, the proposed revision to the Southwest Pass (Mississippi River) Anchorage Area is set forth below effective upon publication in the Federal Register.

Pursuant to the provisions of section 10 of the River and Harbor Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. 403) and Section 4 of the Outer Continental Shelf Lands Act of 7 August 1953 (67 Stat. 462; 43 U.S.C. 1333(f)), Section 209.135 establishing shipping safety fairways and anchorage areas in the Gulf of Mexico is hereby amended with respect to paragraph (d)(29) Southwest Pass (Mississippi River) Anchorage, effective July 30, 1976.

§ 209.135 Shipping Safety Fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) *The areas.* * * *

(29) *Southwest Pass (Mississippi River) Anchorage.* The area between lines joining points at:

Latitude	*Longitude*
28°53′30″	89°25′18″
28°53′30″	89°21′48″
28°55′06″	89°21′48″
28°55′06″	89°19′18″
28°52′41″	89°17′30″
28°50′40″	89°21′14″
28°50′40″	89°24′48″
28°52′42″	89°24′48″
28°53′30″	89°25′18″

* * * * *

(Regs., July 21, 1976) (Sec. 10 of the River and Harbor Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. 403) and Sec. 4 of the Outer Continental Shelf Lands Act of 7 August 1953 (67 Stat. 462; (43 U.S.C. 1333(f)))

Dated: July 7, 1976.

By authority of the Secretary of the Army.

CHARLES T. SEARCH,
Colonel, U.S. Army, Acting Director, Administrative Management, TAGCEN.

Approved: July 7, 1976.

VICTOR V. VEYSEY,
Assistant Secretary of the Army (Civil Works).

[FR Doc.76-22151 Filed 7-29-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTEH N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 590-4]

PART 408—CANNED AND PRESERVED SEAFOOD PROCESSING POINT SOURCE CATEGORY

Corrections

Notice is hereby given that the Environmental Protection Agency (EPA) is correcting 40 CFR 408, Canned and Preserved Seafood Processing Point Source Category as set forth below. On December 1, 1975, the Agency published a notice of final rulemaking (40 FR 55770) establishing effluent limitations and guidelines for the fish meal, salmon, bottom fish, clam, oyster, sardine, scallop, herring, and abalone segment and amending the effluent limitations and guidelines for the catfish, crab, shrimp, and tuna segment of the canned and preserved seafood processing point source category, based upon use of technology currently available.

The purpose of this notice is to correct errors in Subparts O, P, Q, R, S, U, V, Y, and Z. The corrections are for the purpose of correcting a computer programming error and do not involve any substantive or policy issues.

A description of the computer programming error and its correction, entitled "Mathematical Description of Corrections for the Canned and Preserved

Seafood Processing Point Source Category," is available for inspection at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street, SW., Washington, D.C., and ata ll EPA regional offices, Persons wishing to obtain a copy may write to the Environmental Protection Agnecy, 401 M Street, SW., Washington, D.C. 20460. Attention: Distribution Officer, WH-552.

In FR Doc. 75-31837 appearing on page 55770 through 55801 in the issue of December 1, 1975, make the following changes:

§ 408.152 [Amended]

1. The table in Subpart O, § 408.152 (b)(1), is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	7.0	3.9
TSS	3.7	1.5
Oil and grease	1.4	0.76
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	7.0	3.9
TSS	3.7	1.5
Oil and grease	1.4	0.76
pH	Within the range 6.0 to 9.0.	

§ 408.153 [Amended]

2. The table in Subpart O, § 408.153, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	6.7	3.8
TSS	3.7	1.5
Oil and grease	1.4	0.76
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	6.7	3.8
TSS	3.7	1.5
Oil and grease	1.4	0.76
pH	Within the range 6.0 to 9.0.	

§ 408.155 [Amended]

3. The table in Subpart O, § 408.155, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	6.7	3.8
TSS	3.7	1.5
Oil and grease	1.4	0.76
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	6.7	3.8
TSS	3.7	1.5
Oil and grease	1.4	0.76
pH	Within the range 6.0 to 9.0.	

§ 408.162 [Amended]

4. The table in Subpart P, § 408.162(b)(1), is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	2.6	1.6
Oil and grease	0.31	0.19
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	2.6	1.6
Oil and grease	0.31	0.19
pH	Within the range 6.0 to 9.0.	

§ 408.163 [Amended]

5. The table in Subpart P, § 408.163, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	2.3	1.4
Oil and grease	0.28	0.17
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	2.3	1.4
Oil and grease	0.28	0.17
pH	Within the range 6.0 to 9.0.	

§ 408.165 [Amended]

6. The table in Subpart P, § 408.165(a)(1), is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	2.3	1.4
Oil and grease	0.28	0.17
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	2.3	1.4
Oil and grease	0.28	0.17
pH	Within the range 6.0 to 9.0.	

§ 408.172 [Amended]

7. The table in Subpart Q, § 408.172(b)(1), is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	44	26
Oil and grease	29	11
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	44	26
Oil and grease	29	11
pH	Within the range 6.0 to 9.0.	

§ 408.173 [Amended]

8. The table in Subpart Q, § 408.173(a)(1), is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	26	16
TSS	4.2	2.5
Oil and grease	2.8	1.0
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	26	16
TSS	4.2	2.5
Oil and grease	2.8	1.0
pH	Within the range 6.0 to 9.0.	

9. The table in Subpart Q, § 408.173(a)(2), is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	42	25
Oil and grease	28	10
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	42	25
Oil and grease	28	10
pH	Within the range 6.0 to 9.0.	

§ 408.175 [Amended]

10. The table in Subpart Q, § 408.175(a)(1), is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	42	25
Oil and grease	28	10
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	42	25
Oil and grease	28	10
pH	Within the range 6.0 to 9.0.	

§ 408.182 [Amended]

11. The table in Subpart R, § 408.182, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	2.6	1.6
Oil and grease	0.31	0.19
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	2.6	1.6
Oil and grease	0.31	0.19
pH	Within the range 6.0 to 9.0.	

§ 408.183 [Amended]

2. The table in Subpart R, § 408.183, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	1.9	1.2
TSS	0.23	0.14
Oil and grease	0.045	0.018
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	1.9	1.2
TSS	0.23	0.14
Oil and grease	0.045	0.018
pH	Within the range 6.0 to 9.0.	

§ 408.185 [Amended]

13. The table in Subpart R, § 408.185, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	2.7	1.7
TSS	0.70	0.42
Oil and grease	0.045	0.026
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	2.7	1.7
TSS	0.70	0.42
Oil and grease	0.045	0.026
pH	Within the range 6.0 to 9.0.	

§ 408.192 [Amended]

14. The table in Subpart S, § 408.192, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	44	26
Oil and grease	29	11
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	44	26
Oil and grease	29	11
pH	Within the range 6.0 to 9.0.	

§ 408.193 [Amended]

15. The table in Subpart S, § 408.193, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	26	16
TSS	4.2	2.5
Oil and grease	2.8	1.0
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	26	16
TSS	4.2	2.5
Oil and grease	2.8	1.0
pH	Within the range 6.0 to 9.0.	

§ 408.195 [Amended]

16. The table in Subpart S, § 408.195, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	62	38
TSS	13	7.6
Oil and grease	4.2	1.5
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	62	38
TSS	13	7.6
Oil and grease	4.2	1.5
pH	Within the range 6.0 to 9.0.	

§ 408.212 [Amended]

17. The table in Subpart U, § 408.212, is corrected to read as follows:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	3.6	2.0
Oil and grease	1.0	0.55
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	3.6	2.0
Oil and grease	1.0	0.55
pH	Within the range 6.0 to 9.0.	

§ 408.213 [Amended]

18. The table in Subpart U, § 408.213, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	1.2	0.71
TSS	1.5	0.73
Oil and grease	0.077	0.042
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	1.2	0.71
TSS	1.5	0.73
Oil and grease	0.077	0.042
pH	Within the range 6.0 to 9.0.	

§ 408.215 [Amended]

19. The table in Subpart U, § 408.215, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	1.2	0.71
TSS	1.5	0.73
Oil and grease	0.077	0.042
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	1.2	0.71
TSS	1.5	0.73
Oil and grease	0.077	0.042
pH	Within the range 6.0 to 9.0.	

§ 408.222 [Amended]

20. The table in Subpart V, § 408.222, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
TSS	22	12
Oil and grease	9.9	3.9
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
TSS	22	12
Oil and grease	9.9	3.9
pH	Within the range 6.0 to 9.0.	

§ 408.223 [Amended]

21. The table in Subpart V, § 408.223, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	5.4	3.1
TSS	1.8	0.97
Oil and grease	0.79	0.32
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	5.4	3.1
TSS	1.8	0.97
Oil and grease	0.79	0.32
pH	Within the range 6.0 to 9.0.	

§ 408.225 [Amended]

22. The table in Subpart V, § 408.225, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of seafood)		
BOD5	13	7.5
TSS	5.3	2.9
Oil and grease	1.2	0.47
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of seafood)		
BOD5	13	7.5
TSS	5.3	2.9
Oil and grease	1.2	0.47
pH	Within the range 6.0 to 9.0.	

§ 408.252 [Amended]

23. The table in Subpart Y, § 408.252, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 kg of product)		
TSS	47	38
Oil and grease	2.4	1.8
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of product)		
TSS	47	38
Oil and grease	2.4	1.8
pH	Within the range 6.0 to 9.0.	

§ 408.253 [Amended]

24. The table in Subpart Y, § 408.253, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of product)		
TSS	45	36
Oil and grease	2.2	1.7
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of product)		
TSS	45	36
Oil and grease	2.2	1.7
pH	Within the range 6.0 to 9.0.	

§ 408.255 [Amended]

25. The table in Subpart Y, § 408.255, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of product)		
TSS	45	36
Oil and grease	2.2	1.7
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of product)		
TSS	45	36
Oil and grease	2.2	1.7
pH	Within the range 6.0 to 9.0.	

§ 408.262 [Amended]

26. The table in Subpart Z, § 408.262, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of product)		
TSS	24	16
Oil and grease	1.2	0.81
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of product)		
TSS	24	16
Oil and grease	1.2	0.81
pH	Within the range 6.0 to 9.0.	

§ 408.263 [Amended]

27. The table in Subpart Z, § 408.263, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of product)		
TSS	23	16
Oil and grease	1.1	0.77
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of product)		
TSS	23	16
Oil and grease	1.1	0.77
pH	Within the range 6.0 to 9.0.	

§ 408.265 [Amended]

28. The table in Subpart Z, § 408.265, is corrected to read as follows:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Metric units (kilograms per 1,000 kg of product)		
TSS	23	16
Oil and grease	1.1	0.77
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 lb of product)		
TSS	23	16
Oil and grease	1.1	0.77
pH	Within the range 6.0 to 9.0.	

Dated: July 23, 1976.

JOHN QUARLES,
Acting Administrator.

[FR Doc.76-22024 Filed 7-29-76;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. No. 1242; Amdt. No. 1]

PART 1033—CAR SERVICE

Kansas City Southern Railway Co. Authorized To Operate Over Tracks of Southern Pacific Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of July, 1976.

Upon further consideration of Service Order No. 1242 (41 FR 18053) and good cause appearing therefor:

It is ordered, That:

Service Order No. 1242 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

* * * * *

§ 1033.1242 The Kansas City Southern Railway Company authorized to operate over certain tracks of Southern Pacific Transportation Company.

(e) *Expiration date*. The provisions of this order shall expire at 11:59 p.m., October 31, 1976, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment will become effective at 11:59 p.m., July 31, 1976.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Lewis R. Teeple, Thomas J. Byrne, and William J. Love.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-22173 Filed 7-29-76;8:45 am]

[Ex Parte No. 284]

PART 1038—PERFORMANCE STANDARDS FOR THE TRANSPORTATION OF PERISHABLE COMMODITIES

Investigation Into the Need for Defining Reasonable Dispatch (Perishable Commodities)

Present: George M. Stafford, Chairman, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of the petition of Association of American Railroads, filed July 6, 1976, for (A) extension to August 16, 1976, of the date on or before which statements showing cause, if any there may be, why the regulations (49 CFR Part 1038) conditionally adopted in the report and order of April 8, 1976 (351 I.C.C. 812) should not become effective; (B) postponement of the effective date of the regulations; and (C) an opportunity to submit replies to any show cause statement as may be filed herein; and good cause appearing therefor:

It is ordered, That the request in (A) above be, and it is hereby, granted, and the order entered April 8, 1976, be and it is hereby, modified by extending the due date for such statements to August 16, 1976.

It is further ordered, That the request in (B) above be, and it is hereby, granted, and the date on which the regulations should, in the absence of good cause to the contrary, become effective be, and it is hereby, fixed as October 1, 1976.

It is further ordered, That the request in (C) above be, and it is hereby, denied.

It is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

Dated at Washington, D.C., this 23rd day of July 1976.

By the Commission, Chairman Stafford.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-22172 Filed 7-29-76;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of Big Stone National Wildlife Refuge, Minnesota

On May 28, 1976, there was published in the FEDERAL REGISTER (41 FR 21786) a notice of proposed rulemaking adding Big Stone National Wildlife Refuge, Minnesota to the list of refuges areas which are open for the hunting of upland game and big game. These lists are published at 50 CFR 32.21 and 32.31. As a general rule, most areas within the National Wildlife Refuge System are closed to hunting until officially opened by regulation.

Pursuant to the authority of 16 U.S.C. 668dd(d), as redelegated to the Director of the United States Fish and Wildlife Service at DM 242.1.1, the Director has determined that the opening of Big Stone National Wildlife Refuge to public hunting would not be contrary to the provisions of law applicable to the area, would be compatible with the principles of sound wildlife management, would be in the public interest and would be compatible with the major purposes for which the area was established.

The public was provided a 30-day comment period and was advised that an environmental assessment had been prepared on the proposal and was available for public inspection. No comments were received.

Based on the preceding and an evaluation of the environmental assessment, it has been determined that the hunting of upland game and big game on Big Stone National Wildlife Refuge, Minnesota is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C). The preparation of an environmental impact statement on the proposed action is, therefore, not required.

Accordingly, the proposed rulemaking is hereby adopted without change and § 32.21 and § 32.31 are amended as set forth below:

§ 32.21 **List of open areas; upland game.**

* * * * *

MINNESOTA

Big Stone National Wildlife Refuge.

* * * * *

§ 32.31 **List of open areas: big game.**

* * * * *

MINNESOTA

Big Stone National Wildlife Refuge.

* * * * *

Effective date: August 31, 1976.

GEORGE W. MILIAS,
Acting Director,
U.S. Fish and Wildlife Service.

[FR Doc.76-22136 Filed 7-29-76;8:45 am]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 246—TRANSPORTATION OF WILDLIFE

Procedures for Assessment of Civil Penalties

On May 21, 1975, a document was published in the FEDERAL REGISTER (40 FR 22143) proposing to add a new part 246, to carry out the objectives and purposes of Section 43 Title 18, United States Code, commonly called the Lacey Act. The proposed regulations provide uniform rules and procedures for the assessment of civil penalties in connection with violations of the Act as it relates to mollusks or crustaceans. Interested persons were given 30 days to submit written comments, views, or objections to these proposed regulations. No comments were received from outside the agency. Three comments were received from within the agency concerning the need to expand the purpose of these regulations to include all the responsibilities of the Department of Commerce as they relate to the Act. As a result of the comments received, the following changes in the proposed regulations are made:

1. The purpose of the regulations in § 246.1 is changed by deleting the specific references to mollusks or crustaceans and inserting the words "those forms of wildlife under the jurisdiction of the Department of Commerce."

2. The definition of "Wildlife" in § 246.2(i) is changed to include those marine mammals and endangered species that are under the jurisdiction of the Department of Commerce.

Accordingly, 50 CFR Part 246 is revised as set forth below.

Effective date. The regulation shall become effective July 30, 1976.

Signed at Washington, D.C. on July 26, 1976.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Service.

AUTHORITY: 18 U.S.C. 43, Reorganization Plan No. 4 of 1970 (35 FR 15627).

§ 246.1 **Purpose of regulations.**

The regulations contained in this part provide uniform rules and procedures for the assessment of civil penalties in connection with violations of the so-called Lacey Act as it relates to those forms of wildlife under the jurisdiction of the Department of Commerce. For regulations regarding other forms of wildlife see Department of the Interior regulations at Parts 11 and 12 of this title.

§ 246.2 **Definitions.**

(a) "Act" means the provisions of section 43 of Title 18, U.S. Code.

(b) "Authorized Official" means Enforcement Agents of the National Marine Fisheries Service.

(c) "Director" means the Director of the National Marine Fisheries Service or his delegate.

(d) "Person" means any individual, firm, corporation, association, or partnership.

(e) "Respondent" means a person against whom an action is brought under the Act.

(f) "Secretary" means the Secretary of Commerce pursuant to Reorganization Plan No. 4 of 1970 (84 Stat. 2090) or his delegate.

(g) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

(h) "taken" means captured, killed, collected or otherwise possessed.

(i) "wildlife" means any animal over which the Secretary of Commerce exercises jurisdiction, including, but not limited to, marine mammals of the order Cetacea or Pinipedia, other than walruses, any sea turtle of the families Cheloniidae and Dermochelidae, and any mollusk or crustacean or any part, egg or offspring thereof; the dead body or parts thereof; or any product thereof.

§ 246.3 **Prohibitions.**

Subsections (a) and (b) of the Act provide that:

(a) Any person who—

(1) Delivers, carries, transports, or ships, by any means whatsoever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) Delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold in interstate or foreign commerce any wildlife, taken, transported, or sold in any manner in violation of any law or regulation of any State or foreign country.

(b) Any person who—

(1) Sells or causes to be sold any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) Sells or causes to be sold in interstate or foreign commerce any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any law or regulation of a State or a foreign country, or

(3) Having purchased or received wildlife imported from any foreign commerce or shipped, transported, or carried in interstate commerce, makes or causes to be made any false record, account, label, or identification thereof, or

(4) Receives, acquires, or purchases for commercial or noncommercial purposes any wildlife—

(i) Taken, transported, or sold in violation of any law or regulation of any State or foreign country and delivered, carried, transported, or shipped by any means or method in interstate or foreign commerce, or

(ii) Taken, transported, or sold in violation of any Act of Congress or regulation issued thereunder * * *

shall be subject to the penalties prescribed * * *.

§ 246.4 **Enforcement.**

(a) Any authorized official or any officer of the customs is authorized to execute any warrant to search for and seize any wildlife, product, property, records, or item used or possessed in violation of the Act with respect to which a civil penalty under § 246.3 may be assessed.

(b) The Director shall notify the owner or consignee of any wildlife, product, property, or item so seized as soon as practicable following such seizure.

(c) Such wildlife, product, property, or item so seized shall be held by such authorized official until porceedings involving the imposition of a civil penalty are completed.

(d) In lieu of holding such wildlife, product, property, or item so seized, the Director may, in his sole discretion, permit such person to post a bond or other surety satisfactory to the Director.

§ 246.5 **Penalties.**

Any person who knowingly violates or who, in the exercise of due care, should know that he is violating any provision of subsection (a) or (b) of the Act (see § 246.3) may be assessed a civil penalty by the Director of not more than $5,000 for each violation. Each violation shall constitute a separate offense. Such person shall be given notice and oppertunity for a hearing with respect to such violation. Such hearing shall follow the procedures set forth in § 246.6–246.16.

§ 246.6 Notice of proposed assessment; opportunity for hearing.

(a) Prior to the assessment of a civil penalty pursuant to § 246.5 a notice of proposed assessment issued by the Director shall be served personally or by registered or certified mail, return receipt requested, upon the respondent. The notice shall contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act;

(3) The amount of penalty proposed to be assessed.

The notice shall inform the respondent that he has 20 days from receipt of the notice in which to request a hearing or to waive it. The request or waiver shall be in writing and addressed to the Director, National Marine Fisheries Service U.S. Department of Commerce, Washington, D.C. 20235. The notice shall further inform the respondent that if he does not respond to the notice within the 20 days allowed, he shall be deemed to have waived his right to a hearing and and to have consented to the making of an assessment without a hearing.

(b) With his request for a hearing or with his written waiver of a hearing, the respondent may submit objections to the proposed assessment. He may deny the existence of the violation or ask that no penalty be assessed or that the amount be reduced. The respondent must set forth in full all facts supporting his denial of the alleged violation or his request for relief.

§ 246.7 Waiver of hearing; assessment of penalty.

(a) If a written waiver of a hearing is timely made, or if a hearing is deemed to have been waived as provided in § 246.6(a), the Director shall proceed either to make an assessment of a civil penalty or to rescind the proposed assessment taking into consideration such showing as may have been made by respondent pursuant to § 246.6(b). Such action shall become the final administrative decision of the Secretary when rendered and any civil penalty assessed shall be collected in accordance with § 246.16. Notice of such final decision shall be promptly sent to the respondent by registered or certified mail, return receipt requested.

(b) If, despite the waiver of a hearing, the Director believes that there are material facts at issue which cannot otherwise be satisfactorily resolved, he may refer the case to an administrative law judge as provided in § 246.8.

§ 246.8 Appointment of Administrative Law Judge and Agency Representative; notice of hearing.

(a) If a written request for a hearing has been timely made, or the Director determines, pursuant to § 246.7(b), that a hearing should be held, the case shall be assigned to an administrative law judge appointed pursuant to 5 U.S.C. 3105. Written notice of the assignment shall promptly be given to the respondent by the Director, together with the name and address of the person who will present evidence on behalf of the Secretary at the hearing (the agency representative), and thereafter all pleadings and other documents shall be filed directly with the administrative law judge, with a copy served on the agency representative or the respondent as the case may be.

(b) The Director shall deliver to the administrative law judge a copy of the notice of proposed assessment, and response to the respondent thereto, and other materials deemed relevant to the case and shall furnish to the respondent a copy of any such materials not already in respondent's possession.

(c) The administrative law judge shall promptly cause to be served on the parties notice of the time and place of the hearing, which shall not be less than ten (10) days after service of the notice of hearing except in extraordinary circumstances.

§ 246.9 Failure to appear; official transcript; record for decision.

(a) If the respondent fails to appear at the hearing, he will be deemed to have consented to a decision being rendered on the record made at the hearing.

(b) The Director shall provide the services of an official reporter who shall make the only official transcript of the proceedings. Copies of the official transcript may be obtained from the official reporter upon payment of the charges therefor.

(c) The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

§ 246.10 Duties and powers of the Administrative Law Judge.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as they relate to the matter before him. Upon assignment to him and before submission of the case, pursuant to § 246.12, to the Secretary, the administrative law judge shall have authority to:

(1) Rule on offers of proof and receive relevant evidence;

(2) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(3) Regulate the course of the hearing and, if appropriate, exclude from the hearings persons who engage in misconduct, and strike all testimony of witnesses refusing to answer any questions ruled to be proper which are related to such questions;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(5) Dispose of procedural requests, motions or similar matters and order hearings reopened prior to issuance of the administrative law judge's report and recommendations;

(6) Grant requests for appearance of witnesses or production of documents;

(7) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(8) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(9) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(10) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place;

(11) Take official notice of any matters not appearing in evidence in the record which are among the traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a document required to be filed with or published by a duly constituted Government body: *Provided*, That the parties shall be given notice, either during the hearing or by reference in the administrative law judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(12) Prepare, serve, and submit his initial decision pursuant to § 246.14.

(13) Take any other action necessary and not prohibited by this section or the Act.

§ 246.11 Appearance of the respondent and the agency representative.

The respondent and the agency representative shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, to conduct oral argument at the close of testimony and to introduce into the record relevant documentary or other evidence, except that the participation of either party shall be limited to the extent prescribed by the administrative law judge.

§ 246.12 Evidence.

All evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible in the hearing.

§ 246.13 Filing of briefs.

The respondent and the agency representative may submit a brief to the administrative law judge. The original and one copy of such brief shall be filed within 7 days after the close of the hearing, except that the administrative law judge may, for good cause, grant an extension of such time for filing.

§ 246.14 Decisions.

(a) After the close of the hearing and the receipt of briefs, if any, the administrative law judge shall expeditiously prepare an initial decision. The initial decision shall contain findings of fact, conclusions, and the reasons or basis therefore, upon the material issues presented, and shall specifically find whether the respondent committed the violations alleged and, if so, the amount of the civil penalty to be assessed.

(b) The administrative law judge shall cause his initial decision to be served on the respondent and the agency representative within 20 days after the close of the hearing or the receipt of all briefs, whichever is later, and shall forthwith transfer the record in the case to the Secretary through the Director.

(c) Within 10 days of receipt of the initial decision of the administrative law judge, either the respondent or the agency representative may file with the Secretary by serving the Director, an appeal of the initial decision. If no appeal is received within such period, the initial decision shall become the final administrative decision of the Secretary. If an appeal is received within such period, the Secretary shall render a final decision after considering the record and the appeal. Notice of an appeal by either party shall be promptly given in writing to the other party and notice of the Secretary's final decision upon appeal shall be promptly given in writing to both parties.

§ 246.15 Remission, mitigation, or compromise.

For good cause shown, the Secretary may at any time remit, mitigate, or compromise the assessment of a civil penalty made under the provisions of these regulations.

§ 246.16 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

§ 246.17 Disposition of seized wildlife, products, property, or items.

(a) Upon the completion of proceeding involving a civil penalty, the Director may proceed in any court of competent jurisdiction against any wildlife, product, property, or item seized as a result of its use or possession in connection with a violation of the Act to have such wildlife, product, property, or item forfeited to the Director.

(b) Any wildlife, product, property, or item forfeited to the Director may be disposed of in such manner as he deems appropriate.

(c) The Director shall return any wildlife, product, property or item seized or the monetary amount if a bond was posted to the owner or consignee if he does not begin an action to have such wildlife, product, property, or item in a court of competent jurisdiction within 30 days following the disposition of the civil penalty pursuant to § 246.7 or § 246.14, whichever is applicable.

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proposed rules

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 THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAXES

Requirements for Taxpayers Electing 11-Percent Investment Credit

Notice is hereby given that the regulations set forth in tentative form in the attached appendix below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC: LR: T, Washington, D.C. 20224, by September 30, 1976. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by September 30, 1976. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained of 975 (Pub. L. 94–, 89 Stat. 8) and scein section 301(d) of the Tax Reduction Act of 1975 (Pub. L. 94-12, 89 Stat. 38) and section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

ANITA F. ALPERN,
Acting Commissioner of Internal Revenue.

PREAMBLE

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 301(d) of the Tax Reduction Act of 1975 (Pub. L. 94-12, 89 Stat. 38) to provide rules for taxpayers electing an 11-percent investment credit under section 46(a)(1)(B) of the Internal Revenue Code of 1954.

Section 1.46-7 of the proposed regulations contains the statutory provisions of section 301 (d) of the Tax Reduction Act of 1975. Section 1.46-8 contains requirements for taxpayers electing an 11-percent investment credit.

Section 1.46-8(a) of the proposed regulations states the general rule that a corporation may elect to be entitled to an additional 1-percent investment credit if it establishes or maintains an employee stock ownership plan ("TRASP") funded by transfers of employer securities.

In the definition of "employer securities" under § 1.46-8(b)(1) there are tests for determining whether or not certain common stock issued by the employer and transferred to the TRASOP has voting power and dividend rights no less favorable than the voting power and dividend rights of other common stock issued by the employer. The definition also excludes any stock or security which is subject to a call or right of first refusal.

Because questions and answers published in Announcement 75-130 (1975-50 I.R.B. 16), relating to employee stock ownership plans in general, permitted employer securities to be subject to a right of first refusal to the employer, the proposed regulations permit plans to continue holding such securities acquired before September 30, 1976.

Special attention is called to the prohibition of rights of first refusal, and the Internal Revenue Service particularly invites comments and suggestions with respect to this provision.

The definition of employer securities also requires that they be subject to a put to the employer exercisable by a participant for two years after the distribution of such securities. Since Announcement 75-130 specifically prohibits any such put, this requirement applies prospectively.

As a condition for receiving an 11-percent investment credit, § 1.46-8(c)(1) provides that an employer in claiming such credit must agree to transfer employer securities (or cash for the purpose of purchasing employer securities) to the TRASOP in an amount equal to 1 percent of the amount of qualified investment of the employer for the taxable year under section 46 of the Code with respect to the taxable year in which the credit is earned.

Requirements relating to the exercise of rights associated with employer securities appear in § 1.46-8 (d) (7). Under these provisions a TRASOP must permit participants to direct the exercise of voting rights and rights other than voting rights by a designated fiduciary with respect to such securities allocated to their accounts. Duties are imposed upon the designated fiduciary with respect to the notification of participants of the opportunity to exercise such voting and other rights. Rights with respect to unallocated shares are to be exercised as determined under the plan.

There is no requirement under the proposed regulations that a TRASOP be a qualified plan under section 401(a) of the Code. However, a TRASOP that does not meet the requirements of section 401(a) must nonetheless comply with the provisions of § 1.46-8(e)(2) relating to taxability, amounts allocated to participants' accounts, participation and contributions.

PROPOSED AMENDMENTS TO THE REGULATIONS

In order to prescribe regulations relating to requirements for taxpayers electing the 11-percent investment credit under section 46(a)(1)(B) of the Internal Revenue Code of 1954 and section 301(d) of the Tax Reduction Act of 1975, the Income Tax Regulations (26 CFR Part 1) are amended as follows:

Immediately after § 1.46-6 there are added:

§ 1.46–7 Statutory provisions; plan requirements for taxpayers electing 11-percent investment credit.

Section 301(d) of the Tax Reduction Act of 1975 (89 Stat. 38) provides as follows:

SEC. 301.—*Increase in investment credit.* * * *

(d) *Plan requirements for taxpayers electing 11-percent credit.*—In order to meet the requirements of this section—

(1) A corporation (hereinafter in this subsection referred to as the "employer") must establish an employee stock ownership plan (described in paragraph (2)) which is funded by transfers of employer securities in accordance with the provisions of paragraph (6) and which meets all other requirements of this subsection.

(2) The plan referred to in paragraph (1) must be a defined contribution plan established in writing which—

(A) Is a stock bonus plan, a stock bonus and money purchase pension plan, or a profit-sharing plan,

(B) Is designed to invest primarily in employer securities, and

(C) Meets such other requirements (similar to requirements applicable to employee stock ownership plans as refined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Secretary of the Treasury or his delegate may prescribe.

(3) The plan must provide for the allocation of all employer securities transferred to it or purchased by it (because of the requirements of section 46(a)(1)(B) of the Internal Revenue Code of 1954) to the account of each participant (who was a participant at any time during the plan year, whether or not he is a participant at the close of the plan year) as of the close of each plan year in an amount which bears substantially the same proportion to the amount of all such securities allocated to all participants in the plan for that plan year as the amount of compensation paid to such participant (disregarding any compensation in excess of the first $100,000 per year) bears to the compensation paid to all such participants during that year (disregarding any compensation in excess of the first $100,000 with respect to any participant). Notwithstanding the first sentence of this paragraph, the allocation to participants' accounts may be extended over whatever period may be necessary to comply with the requirements of section 415 of the Internal Revenue Code of 1954.

(4) The plan must provide that each participant has a nonforfeitable right to any stock allocated to his account under paragraph (3), and that no stock allocated to a participant's account may be distributed from that account before the end of the eighty-fourth month beginning after the month in which the stock is allocated to the account except in the case of separation from service, death, or disability.

(5) The plan must provide that each participant is entitled to direct the plan as to the manner in which any employer securities allocated to the account of the participant are to be voted.

(6) On making a claim for credit, adjustment, or refund under section 38 of the Internal Revenue Code of 1954, the employer states in such claim that it agrees, as a condition of receiving any such credit, adjustment, or refund, to transfer employer securities forthwith to the plan having an aggregate value at the time of the claim of 1 percent of the amount of the qualified investment (as determined under section 46 (c) and (d) of such Code) of the taxpayer for the taxable year. For purposes of meeting the requirements of this paragraph, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the plan, used to purchase employer securities.

(7) Notwithstanding any other provision of law to the contrary, if the plan does not meet the requirements of section 401 of the Internal Revenue Code of 1954—

(A) Stock transferred under paragraph (6) and allocated to the account of any participant under paragraph (3) and dividends thereon shall not be considered income of the participant or his beneficiary under the Internal Revenue Code of 1954 until actually distributed or made available to the participant or his beneficiary and, at such time, shall be taxable under section 72 of such Code (treating the participant or his beneficiary as having a basis of zero in the contract),

(B) No amount shall be allocated to any participant in excess of the amount which might be allocated if the plan met the requirements of section 401 of such Code, and

(C) The plan must meet the requirements of section 410 and 415 of such Code.

(8) If the amount of the credit determined under section 46(a)(1)(B) of the Internal Revenue Code of 1954, is recaptured in accordance with the provisions of such Code, the amounts transferred to the plan under this subsection and allocated under the plan shall remain in the plan or in participant accounts, as the case may be and continue to be allocated in accordance with the original plan agreement.

(9) For purposes of this subsection, the term—

(A) "Employer securities" means common stock issued by the employer or a corporation which is in control of the employer (within the meaning of section 368(c) of the Internal Revenue Code of 1954) with voting power and dividend rights no less favorable than the voting power and dividend rights of other common stock issued by the employer or such controlling corporation, or securities issued by the employer or such controlling corporation, convertible into such stock, and

(B) "Value" means the average of closing prices of the employer's securities, as reported by a national exchange on which securities are listed, for the 20 consecutive trading days immediately preceding the date of transfer or allocation of such securities or, in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations issued by the Secretary of the Treasury or his delegate.

(10) The Secretary of the Treasury or his delegate shall prescribe such regulations and require such reports as may be necessary to carry out the provisions of this subsection.

(11) If the employer fails to meet any requirement imposed under this subsection or under any obligation undertaken to comply with the requirement of this subsection, he is liable to the United States for a civil penalty of an amount equal to the amount involved in such failure. The preceding sentence shall not apply if the taxpayer corrects such failure (as determined by the Secretary of the Treasury or his delegate) within 90 days after notice thereof. For purposes of this paragraph, the term "amount involved" means an amount determined by the Secretary or his delegate, but not in excess of 1 percent of the qualified investment of the taxpayer for the taxable year under section 46(a)(1)(B) and not less than the product of one-half of one percent of such amount multiplied by the number of months (or parts thereof) during which such failure continues. The amount of such penalty may be collected by the Secretary of the Treasury in the same manner in which a deficiency in the payment of Federal income tax may be collected.

(12) Notwithstanding any provision of the Internal Revenue Code of 1954 to the contrary, no deductions shall be allowed under section 162, 212, or 404 of such Code for amounts transferred to an employee stock ownership plan and taken into account under this subsection.

§ 1.46–8 Requirements for taxpayers electing 11-percent investment credit.

(a) *General rules*—(1) *Introduction.*—For a taxable year ending after January 21, 1975, a corporation (other than an electing small business corporation within the meaning of section 1371 (b) of the Code) may elect under section 46(a)(1)(B) of the Code, in the time and manner prescribed in paragraph (c)(1) of this section, to claim a credit equal to 11 percent of the qualified investment properly attributable to property and qualified progress expenditures described in section 46 (c) and (d) of the Code (an "11-percent credit") to which section 46(a)(1)(B) applies by reason of section 46(a)(1)(D) if the requirements of section 301 (d) of the Tax Reduction Act of 1975 (the "1975 TRA") and this section are met. To satisfy such requirements, a corporation which is an employer within the meaning of paragraph (b)(3) of this section must establish or maintain an employee stock ownership plan (a "TRASOP") meeting the general plan requirements of paragraph (d) of this section and must transfer employer securities (as defined in paragraph (b)(1) of this section) to the TRASOP in accordance with the provisions of paragraph (c)(2) of this section. The value of employer securities for purposes of determining the amount to be transferred under paragraph (c) of this section must be calculated under paragraph (b)(2) of this section. A plan which otherwise meets the requirements of this section but which is not a qualified plan under section 401(a) of the Code will nevertheless meet the requirements of the 1975 TRA and this section if such plan satisfies the requirements of paragraph (e)(2) of this section.

(2) *No deduction.*—Notwithstanding any provisions of the Code to the contrary, no deduction shall be allowed under section 162, 212, or 404 of the Code for employer securities or cash transferred to a TRASOP if such amount is taken into account under this section. However, section 404 will apply to any amount transferred to the TRASOP which is not taken into account under this section. An amount is taken into account under this section if such amount is necessary in order that a credit under section 38 be allowed.

(3) *New plan not required.*—A new plan need not be established if an existing plan meets the requirements of this section and section 301(d) of the 1975 TRA or is amended to meet these requirements.

(b) *Definitions*—(1) *Employer securities*—(i) *In general.*—For purposes of section 301(d) of the 1975 TRA and this section, the term "employer securities" means common stock issued by the employer that meets the requirements of paragraph (b)(1)(ii) of this section and convertible securities that meet the requirements of paragraph (b)(1)(iii) of this section. No employer security may be subject to a call or right of first refusal, except that an employer security subject to a right of first refusal to the employer while held by a TRASOP before September 30, 1976, may continue to be subject to such right of first refusal. All unlisted common stock or convertible securities transferred to a TRASOP after September 30, 1976, must be subject to a mandatory put to the employer that meets the requirements of paragraph (b)(1)(iv) of this section. Stock rights, warrants and options do not constitute employer securities.

(ii) *Common stock.*—To be taken into account under this section, common stock must have voting power and unrestricted dividend rights within the meaning of paragraph (b)(4) of this section. Voting power and dividend rights must be no less favorable than the voting power and dividend rights of any other common stock issued by the employer. Common stock within the meaning of this (ii) must meet one of the following tests:

(A) The stock is part of, or identical to, a class of stock of which (prior to the transfer to the TRASOP) at least 50 percent is owned by shareholders no one of whom owns more than 10 percent of the shares in such class of stock.

(B) If there is only one class of stock, the stock issued to the TRASOP is part of, or identical to, shares in such class of stock, or if there is more than one class of stock, then shares with respect to each class must be transferred to the TRASOP, so that each class of stock transferred to the TRASOP, as compared to all classes of stock transferred to the TRASOP, is substantially in the proportion the fair market value of the total outstanding shares of the particular class bears to the aggregate fair market value of all outstanding classes of stock (both values excluding shares owned by the TRASOP). This result will be obtained if the number of shares of stock in a particular class is in proportion to the number of shares of each and every other class of stock. For example, if there are two classes of stock, Class A and Class B, and if the fair market values of the outstanding shares of Class A stock and Class B stock are $100,000 and $200,000, respectively, and prior to the acquisition the ESOP has no interest in such stock, then such stock will meet the requirements of this (B) if the fair market value of the Class B stock it acquires is twice that of the Class A stock it acquires.

(C) The stock is part of, or identical to, that existing class of stock having the greatest number of votes per unit of fair market value. For example, if there are two classes of stock, Class A and Class B, with a fair market value per share of $1 and $.50, respectively, and if the owner of each share of each class is entitled to one vote per share, then a share of Class B stock has the greatest number of votes per dollar of value (2 votes per $1 as compared to 1 vote per $1) and stock will meet the requirements of this (C) if it is part of, or identical to, a share of Class B.

(iii) *Convertible securities*.—To be taken into account under this section, securities must be qualifying employer securities under section 4975(e)(8) of the Code that are immediately convertible, at a reasonable conversion ratio, into common stock (which meets the requirements of paragraphs (b)(1) (i) and (iv) of this section) by the holder of such securities after distribution and, while held by the TRASOP, at the direction of the participant to whose account the securities have been allocated.

(iv) *Mandatory put*.—In the case of common stock or convertible securities not listed on a national exchange, in order to meet the requirements of paragraph (b)(1)(i) of this section, each share of common stock and each convertible security transferred to a TRASOP after September 30, 1976, must be subject to a put to the employer that meets the requirements of this (iv). Such put must be exercisable during a two-year period which begins on the date the employer securities are distributed to a participant. If securities described in paragraph (b)(1)(iii) of this section are transferred to a participant, which are convertible into common stock which meets the requirements of paragraph (b)(1)(i) of this section, the period during which such put may be exercised expires two years after the date the convertible securities are distributed to the participant. The price at which a put meeting the requirements of this (iv) is exercisable is the fair market value of the common stock as of the date of exercise determined in accordance with paragraph (b)(2) of this section, and shall be paid in cash within a reasonable time from exercise. Such puts shall be exercisable by participants or their beneficiaries or by persons to whom such common stock or convertible securities are transferred by gift from participants or their beneficiaries or by reason of the death of such participants and beneficiaries.

(2) *Value*.—Under section 301(d) of the 1975 TRA and for purposes of paragraph (c) of this section, the term "value" means, in the case of securities listed on a national exchange, the average of closing prices of the employer's securities, as reported by such exchange for the 20 consecutive trading days immediately preceding the date of the election under paragraph (c) of this section. In the case of securities not listed on a national exchange, a good faith determination of value shall be made on the basis of all relevant factors for determining fair market value. With respect to such unlisted securities, a determination of fair market value based on two or more appraisals independently arrived at by organizations that customarily make such appraisals, all of which organizations are independent of the employer, shall in all such cases be a good faith determination of value. If the employer has knowledge of the disreputability of any appraiser making such determination, good faith will be lacking. A certificate of value with respect to unlisted secuirties taken into account under this section after September 30, 1976, shall be filed by the employer with the TRASOP when a determination of value has been made for purposes of paragraph (c) of this section and on an annual basis thereafter. Each participant receiving a distribution of employer securities under the plan shall also receive at the time of such distribution a copy of the most recent certificate and a copy of each annual certificate thereafter until the put described in paragraph (b)(1)(iv) of this section has expired with respect to employer securities received in such distribution.

(3) *Employer*.—For purposes of this section the term "employer" means the employer or a corporation which is in control of the employer within the meaning of section 368(c).

(4) *Unrestricted dividend rights*. For purposes of section 301(d) of the 1975 TRA and this section, dividend rights mean rights to receive dividends as defined by the governing law of the state of incorporation of the corporation. Such rights are unrestricted if they are limited in no way other than as positively prescribed by statute in the state of incorporation.

(c) *Election of 11-percent credit*—(1) *Time and manner of election*. (i) An election under section 46(a)(1)(B) to claim an 11-percent credit for a taxable year shall be made on or before the due date (including extensions of time) for filing the corporation's income tax return for the year in which the credit is earned or, if later, December 31, 1975.

(ii) The election shall be made by attaching a statement to the corporation's return for the taxable year in which the credit is earned, or in the case of a return filed prior to December 31, 1975, by attaching a statement to an amended return filed on or before December 31, 1975. The statement shall indicate that an election is being made under section 46(a)(1)(B) of the Code and that the employer agrees as a condition for receiving the 11-percent credit to transfer employer securities forthwith to a TRASOP in the manner described in paragraph (c)(2) of this section.

(iii) An election to claim the 11-percent credit for a taxable year shall apply to the total qualified investment property for such taxable year properly attributable to property and qualified progress expenditures described in section 46 (c) and (d) of the Code to which section 46(a)(1)(B) applies by reason of section 46(a)(1)(D). Thus, an electing employer may not elect the 11-percent credit for one portion of such qualified investment and a 10-percent credit under section 46(a)(1)(A) of the Code for another portion.

(iv) If an election for a taxable year is not made within the time and in the manner described in paragraph (c)(1) of this section, no election may be made for such taxable year (by the filing of an amended return or otherwise).

(v) An election under section 46(a)(1)(B) for a taxable year may not be revoked without the consent of the Commissioner after the time prescribed in paragraph (c)(1) of this section for making the election has expired.

(2) *Establishment of TRASOP and transfer of employer securities*. (i) To meet the requirements of section 301(d) of the 1975 TRA, a TRASOP with accompanying trust must be in existence on or before the last day for making an election under paragraph (c)(1) of this section. For purposes of this section a TRASOP will be considered in existence whether or not the TRASOP has been funded on such date.

(ii) The aggregate of value of employer securities to be transferred under this section must at the time of the election be an amount equal to one percent of the qualified investment of the employer for the taxable year under section

46 (c) and (d) of the Code to which section 46(a)(1)(B) applies by reason of section 46(a)(1)(D).

(iii) The transfer of all of the employer securities described in paragraph (c)(2)(ii) of this section must be made on or before the 30th day following the last day for making an election under paragraph (c)(1) of this section.

(iv) To meet the requirements of paragraph (c)(2) of this section, a transfer of cash in an amount equal to one percent of the qualified investment shall be treated as a transfer of employer securities if under the TRASOP the cash is used to purchase employer securities on or before the 30th day following the last day for making an election under paragraph (c)(1) of this section.

(v) The requirements of section 301(d)(6) of the 1975 TRA and paragraph (c)(2) of this section will not be satisfied merely by establishing and crediting a separate TRASOP account on the employer's books.

(vi) If a plan provides for regular contributions in addition to the contributions required under section 301(d)(6) of the 1975 TRA and paragraph (c)(2) of this section, the latter contributions must be accounted for separately from the regular contributions to the plan.

(d) *General plan requirements*—(1) *General rule*. A TRASOP must be a defined contribution plan established in writing which—

(i) Is a stock bonus plan, a stock bonus plan and a money purchase pension plan, or a profit-sharing plan (as described in § 1.401-1(b)(1)) and

(ii) Is designed to invest primarily in employer securities as provided in paragraph (d)(2) of this section.

(2) *Designed to invest primarily in employer securities*. A plan constitutes a TRASOP only if the plan specifically states that it is designed to invest primarily in employer securities.

(3) *Employee contributions*. The receipt of benefits attributable to transfers required by the provisions of paragraph (c)(2) of this section may not be dependent upon contributions by the participants. If the employer has a plan in existence which requires employee contributions, such plan may be used to meet the requirements of this section if no employee contributions are required with respect to amounts transferred under the provisions of paragraph (c)(2) of this section and participation in the plan with respect to these amounts is not dependent upon employee contributions.

(4) *Expenses and debts of the TRASOP*. Amounts taken into account under this section cannot be used to pay the administrative expenses of the TRASOP or to satisfy a previous loan made to the TRASOP or be used as collateral for a loan to the TRASOP.

(5) *Allocation of amounts taken into account under this section*. (i) The plan must provide for the allocation of all amounts taken into account under this section. Such amounts must be allocated to the account of each participant who was a participant at any time during the plan year, whether or not he is a participant at the close of the plan year, as of a date prior to the close of each plan year. The allocation to each participant shall be in an amount which bears substantially the same proportion to the amount of all such amounts allocated to all participants in the plan for that plan year as the amount of the total annual compensation (as defined in paragraph (e)(1)(v) of this section) paid to the participant during the plan year, disregarding any compensation for such plan year in excess of a stated amount not greater than $100,000, bears to the compensation paid to all such participants during the plan year, disregarding any compensation in excess of such stated amount paid with respect to any participant. Substantial proportionality is satisfied if the participant's total annual compensation is expressed in terms of whole dollars.

(ii) If the contributions in any one year to a participant's account would exceed the limits of section 415 of the Code, the contributions shall be reallocated proportionately under paragraph (d)(5)(i) of this section to the accounts of other participants until the additions to the account of each participant reach the limits of section 415.

(iii) If, after the reallocations described in paragraph (d)(5)(ii) of this section, the amounts taken into account under this section are greater than otherwise allowed by the limits of section 415 of the Code, the portion exceeding the section 415 limits will not cause the plan to be disqualified under section 401(a) of the Code or to violate the requirements of section 301(d) of the 1975 TRA if such amount is held in an unallocated account in the TRASOP or in an escrow account and in later years such amount is allocated to the participants' accounts proportionately under paragraph (d)(5)(i) of this section with regard to the annual compensation for such later year. The beneficiary of the esecrow account is to be the TRASOP. The employer may establish such an escrow account and contribute stock or cash to it. In such a case the escrow agent must transfer assets to the plan each year to the maximum extent possible without violating the limitations of section 415. Similar procedures shall apply if an unallocated account is used.

(iv) The allocation and distribution of amounts taken into account under this section may not be integrated, directly or indirectly, with contributions or benefits under Title II of the Social Security Act (42 U.S.C. 401).

(v) For purposes of this section, the term "compensation" shall have the same meaning as the term "participant's compensation" has under section 415(c)(3) and the regulations thereunder.

(vi) Participants are to be allocated fractional shares or fractional rights to shares and other employer securities.

(6) *Nonforfeitability*. The plan must provide that each participant has a nonforfeitable right to any amount taken into account under this section. For purposes of this section, forfeitures described in section 411(a)(3) of the Code are not permitted.

(7) *Exercise of rights*—(i) *Voting rights*. (A) The plan must provide that each participant is entitled to direct a designated fiduciary as to the manner in which any employer securities allocated to the account of the participant are to be voted. The designated fiduciary shall notify participants of each occasion for the exercise of voting rights within a reasonable time (not less than 30 days) before such rights are to be exercised. This notification shall include all the information that the corporation distributes to shareholders regarding the exercise of such rights.

(B) The participants are to be allowed to vote fractional shares (or fractional rights to shares). This requirement is satisfied if the designated fiduciary votes the combined fractional shares or rights to shares to the extent possible to reflect the direction of the participants holding fractional shares or rights to shares.

(C) If a participant does not direct the designated fiduciary in whole or in part with respect to the exercise of voting rights arising under employer securities allocated to his account, such voting rights shall be exercised only to the extent directed by such participant.

(D) The plan need not permit employees to direct the voting of unallocated employer securities held by the trust.

(ii) *Rights other than voting rights*. The plan shall provide that each participant is entitled to direct the exercise of rights other than voting rights (such as, for example, a conversion privilege) in the manner prescribed under paragraph (d)(7)(i) of this section.

(8) *Distributions*. The plan must provide that no employer securities which have been allocated to a participant's account in accordance with section 301(d)(3) of the 1975 TRA and paragraph (d)(5) of this section may be distributed from that account before the end of the 84th month beginning after the month in which the stock is allocated to the participant's account except in the case of separation from service, death, or disability. However, a qualified money purchase pension plan can make a distribution only in the case of separation from service, death, or disability. All TRASOP's, including qualified stock bonus TRASOP's, can distribute cash instead of fractional shares.

(9) *Controlled group of corporations, etc.* All employees who by reason of section 414 (b) and (c) of the Code are treated as employees of the electing employer shall be treated as employed by such electing employer in determining whether the participation requirements of section 410 of the Code (and section 301(d)(7)(C) of the 1975 TRA, relating to plans not meeting the requirements of section 401 of the Code) are satisfied.

(10) *Recapture of investment credit*—(i) *In general*. If the amount of the investment credit determined under section 46(a)(1)(B) of the Code is recaptured in accordance with the provisions

of section 47 of the Code, the amount taken into account under this section shall remain in the plan or in the participants' accounts, as the case may be, and continue to be allocated in accordance with the original plan. If all or a portion of the credit attributable to the TRASOP contribution is recaptured, a deduction under section 404 of the Code, relating to deductions for contributions to an employees' trust or plan, may be allowable.

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

Example. On February 1, 1975, Corporation X, which is on a calendar year basis, makes a qualified investment with a basis of $1,000,000 and a useful life of eight years. After having claimed an investment credit of $107,600 ($100,000 (10% of $1,000,000) under section 46(a) (1) (A) of the Code plus $7,600 of the additional $10,000 credit (1% of $1,000,000) permitted under section 46(a) (1) (B) of the Code) the corporation disposes of the qualified investment at the end of 1980. Corporation A contributes the full $10,000 to a TRASOP in order to qualify for the additional credit. Under section 47 of the Code, $26,900 of the qualified investment (⅜th of $100,000 ($25,000) plus ⅜th of $7,600 ($1,900)) must be recaptured because the section 38 property was disposed of two years before the close of its useful life. The amount recaptured with respect to the additional 1% credit ($1,900) plus $2,400 ($10,000–$7,600), the amount remaining in the plan for which no credit has been or will be allowed because of the recapture, may be deductible under section 404 of the Code. Therefore, a total of $4,300 ($1,900+$2,400) may be deductible because of the recapture with respect to the amount taken into account under this section.

(e) *Qualified and non-qualified TRASOP's*—(1) *General rule.* A TRASOP may, but need not, meet the requirements of section 401(a) of the Code. See Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") for additional provisions applicable to an employee pension benefit plan (whether or not qualified under section 401(a) of the Code), within the meaning of section 3(2) of ERISA.

(2) *Non-qualified TRASOP's.* Notwithstanding any other provision of law to the contrary, if the TRASOP does not meet the requirements of section 401(a) of the Code, under section 301(d) (7) of the 1975 TRA the following rules shall nevertheless apply with respect to amounts taken into account under this section:

(i) *Participation.* The plan must meet the requirements of section 410 of the Code. See paragraph (d) (9) of this section with regard to the application of sections 414 (b) and (c) of the Code.

(ii) *Contributions.* The plan must meet the requirements of section 415 of the Code. However, plans qualifying under section 401(a) of the Code and plans described in section 415(e) (5) shall not be aggregated with a TRASOP in applying subsections (e), (f), and (g) of section 415 for years beginning before January 1, 1976.

(iii) *Allocation.* No amount shall be allocated to any participant in excess of the amount which might be allocated if the plan met the requirements of section 401(a) of the Code.

(iv) *Taxability.* An amount taken into account under this section and dividends thereon shall not be considered income of the participant or his beneficiary until it is actually distributed or made available to the participant or his beneficiary. These amounts shall not be considered "wages" or "compensation" for purposes of Subtitle C of the Code (relating to employment taxes). The treatment of the distribution shall be determined under section 72 of the Code. For purposes of applying section 72, the investment in the contract of the participant or his beneficiary shall be treated as zero. If the TRASOP does not meet the requirements of section 301(d) of the 1975 TRA, see section 402 of the Code, relating to taxability of beneficiary of employee's trust.

(3) *Qualified TRASOP's*—(i) *Introduction.* To constitute a qualified plan, a TRASOP must meet the requirements of section 401(a) of the Code and paragraph (3) (ii) of this section. Such a qualified TRASOP is subject to the prohibited transaction rules of section 4975 of the Code and paragraph (e) (3) (iii) of this section.

(ii) *Permanence.* A TRASOP must be a permanent plan, as defined in § 1.401–1 (b) (2), in order to satisfy the requirements of section 401(a) of the Code. A TRASOP will not fail to be a permanent plan merely because employer contributions are not made for a year for which the 11-percent credit is not available. However, the preceding sentence will not apply if the employer fails to make contributions necessary to obtain an additional investment credit which otherwise would be available or fails to do so because such employer elected only the 10-percent credit for such year. In addition, the preceding two sentences shall not apply to any contributions to a plan not made for the express purpose of obtaining an additional investment credit. If a plan that meets the requirements of section 401(a) acquires securities under section 301(d) (6) of the 1975 TRA and paragraph (c) (2) of this section in addition to the plan's regular rate of contributions and the regular contributions continue on a permanent basis, the plan's qualification under section 401(a) will not be adversely affected merely because contributions under section 301(d) (6) of the 1975 TRA and paragraph (c) (2) of this section cease to be required, and such plan will not be considered partially terminated merely because the rate of contribution to the plan after the employer has made the contributions required under section 301 (d) (6) of the 1975 TRA equals only the rate of the regular contributions provided under such plan.

(iii) *Prohibited transactions*—(A) *In general.* Because a plan that meets the requirements of section 401(a) of the Code is subject to the prohibited transaction provisions of section 4975 of the Code, a qualified TRASOP cannot engage in certain transactions under section 4975(c) (1) unless an exemption under section 4975 (c) (2) or (d) is applicable. Among such exempted transactions are certain loans under section 4975(d) (3) and the acquisition or holding of certain employer securities (otherwise limited under section 406 and 407 of ERISA) under section 4975(d) (13). Paragraph (e) (3) (iii) (B) of this section sets out a requirement for a loan to a TRASOP to qualify for the exemption under section 4975(d) (3), and paragraph (e) (3) (iii) (C) of this section allows certain TRASOP's to qualify for the exemption under section 4975(d) (13).

(B) *Certain loans to TRASOP's.* For a loan to a TRASOP to meet the requirements of section 4975(d) (3) of the Code and the regulations thereunder, the TRASOP must be an employee stock ownership plan within the meaning of section 4975(e) (7) and regulations prescribed thereunder.

(C) *Acquisition or holding of certain employer securities.* Under section 4975 (d) (13) of the Code, any transaction with a plan that is exempt from section 406 of ERISA by reason of section 408(e) of such Act (or which would be exempt if such section applied to the transaction) is exempt from the prohibitions of section 4975(c) (1). For the transaction to be exempt under section 408(e) (3) (A) of ERISA, the plan must be an eligible individual account plan for purposes of section 408(e) (3) (A) (as defined in section 407(d) (3)) of ERISA. If part of a TRASOP is a qualified money purchase plan and such TRASOP is an employee stock ownership plan under section 4975 (e) (7) of the Code, such plan is an eligible individual account plan even though the money purchase plan was not in existence on September 2, 1974.

(f) *Reports.* The returns required by section 6058(a) of the Code shall be filed on behalf of the TRASOP whether or not such plan is qualified under section 401 (a).

(g) *Correction of errors*—(1) *Availability of 11-percent credit.* (i) An employer who fails to meet the requirements of section 301(d) of the 1975 TRA and this section will still be entitled to the 11-percent credit if such employer has made a good faith effort to comply with such requirements and corrects any error within 90 days after notification by the district director of such error. The employer has the burden of establishing that a good faith effort has been made. For example, if the employer can show that he made a good faith effort to establish the fair market value of the employer securities that were transferred to the TRASOP, the employer is entitled to the 11-percent credit even if, on later examination of the return, it is determined that more stock should have been transferred. The employer must make up the deficiency within 90 days after notification of the error by contributing additional shares of stock (based on the value at the time the transfer originally was to have been made) plus the dividends paid between the time that the transfer should have been made and the actual time of the transfer.

(ii) If the employer cannot establish that an error was committed in a good faith attempt to comply with the requirements of section 301(d) of the 1975 TRA and this section, the employer will not be entitled to any fraction of the 11-percent investment credit under section 46(a)(1)(B) of the Code. No attempt to comply will be treated as in good faith under this paragraph if such error is not corrected within the period stated in this paragraph.

(2) *Civil penalty*—(i) *General rule.* In addition to any other sanctions that may be applicable, if the employer fails to meet any requirement imposed under this section or under any obligation undertaken to comply with the requirements of this section, the employer is liable to the United States for a civil penalty of an amount equal to the amount involved in such failure. However, if the employer corrects such failure as determined by the district director within 90 days after the district director notifies the employer of such failure, the employer is not liable for the civil penalty.

(ii) *Amount involved.* For purposes of this paragraph, the term "amount involved" means the amount required to place the plan in the position in which it should have been if no failure had occurred. This amount shall not exceed 1 percent of the qualified investment of the employer for the taxable year under section 46(a)(1)(B) of the Code and shall not be less than the product of ½ percent of such 1 percent of the qualified investment multiplied by the number of months, or parts of months, during which the failure continues.

(iii) *Assessment and collection.* The amount of such penalty shall be assessed and collected in the same manner in which a deficiency in the payment of Federal income tax may be assessed and collected.

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Internal Revenue Service

[26 CFR Part 1 and 54]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Employee Stock Ownership Plans

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by September 30, 1976. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the persons submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by September 30, 1976. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in sections 4975(e)(7) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 976, 68A Stat. 917; 26 U.S.C. 4975(e), 7805).

ANITA F. ALPERN,
Acting Commissioner
of Internal Revenue.

PREAMBLE

This document contains proposed amendments to conform the regulations relating to Excise Taxes imposed with respect to Retirement Income Plans (26 CFR Part 54) with section 4975 (d)(3), (e)(7), and (e)(8) of the Internal Revenue Code of 1954, as added by section 2003(a) of the Employee Retirement Income Security Act of 1974 (the "Act") (88 Stat. 971). It also contains an addition to § 1.301-1(l) of the Income Tax Regulations (26 CFR Part 1).

By notice appearing in this issue of the FEDERAL REGISTER, the Department of Labor has announced that it has under consideration a proposal to adopt similar regulations under parallel provisions of the Act.

Section 54.4975-7(b) of the proposed regulations provides requirements that must be met if a loan to an employee stock ownership plan ("ESOP") by a disqualified person is to be exempt under section 4975(d)(3) of the Code. The scope of the exemption extends to transactions described in section 4975(c)(1)(A) through (D). Although the exemption does not apply to acts of self-dealing by fiduciaries under section 4975(c)(1)(E), certain transactions involving loans or guarantees by fiduciaries will not constitute self-dealing under section 4975(c)(1)(E) if the transaction is arranged and approved by an independent fiduciary. The exemption also does not apply to transactions within the meaning of section 4975(c)(1)(F) relating to "kickbacks" to fiduciaries and similar transactions.

In general, the proceeds of any such loan must be used to purchase qualifying employer securities (within the meaning of section 4975(e)(8) and § 54.4975-12). Under § 54.4975-7(b)(2)(i)(B)(*1*) the proceeds of such a loan may not be used to purchase any such securities that are subject to a call or right of first refusal but must provide a put to the employer.

Because questions and answers published in Announcement 75-130 (1975-50 I.R.B. 16), relating to employee stock ownership plans in general, permitted employer securities to be subject to a right of first refusal to the employer, the proposed regulations permit plans to continue holding such securities acquired before September 30, 1976. Since the questions and answers specifically prohibit any employer security from being subject to a put, the mandatory provision of the proposed regulations with respect to a put would have prospective applicability.

Special attention is called to the prohibition of rights of first refusal, and the Internal Revenue Service specifically invites comments and suggestions with respect to this provision.

Section 4975(e)(7) of the Code defines an ESOP and § 54.4975-11 contains requirements that a plan must meet under section 4975(e)(7).

Section 4975(e)(7)(A) of the Code requires that an ESOP must be a plan designed to invest primarily in qualifying employer securities. Section 54.4975-11(b) provides that a plan is designed to invest in employer securities if it states that it is so designed.

Section 54.4975-11(c) of the proposed regulations contains provisions relating to the allocation of ESOP assets to the accounts of participants. Under § 54.-4975-11(c)(2) securities acquired with the proceeds of loans under the exemption of section 4975(d)(3) of the Code must be placed in a suspense account in accordance with § 54.4975-11(h) and allocated as they are released from the suspense account. Section 54.-4975-11(c)(3) provides that dividends and other income from qualifying employer securities allocated to a participant's account must also be allocated to such participant's account.

Under § 54.4975-11(d) voting rights and rights other than voting rights associated with allocated securities pass through to participants. However, such rights with respect to unallocated securities are to be exercised as determined by the ESOP.

Special requirements must be met under § 54.4975-11(h) relating to the treatment of qualifying employer securities acquired with the proceeds of an exempt loan under section 4975(d)(3) of the Code. A suspense account is to be created under § 54.4975-11(h) to hold such securities under § 54.4975-7(b)(2)(iii) until they are released from such account to be allocated under § 54.4975-11(c). Any such securities pledged as collateral for an exempt loan must comply with the provision of § 54.4975-7(b)(2)(iv).

Section 54.4975-12 defines the term "qualifying employer security."

PROPOSED AMENDMENTS TO THE REGULATIONS

In order to amend the Income Tax Regulations (26 CFR Part 1) under section 301 of the Internal Revenue Code of 1954 and to conform the regulations relating to Excise Taxes imposed with respect to Retirement Income Plans (26 CFR Part 54) to sections 4975 (d)(3), (e)(7) and (e)(8) of the Internal Revenue Code of 1954 as added by section 2003 of the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 88 Stat. 971), such regulations are amended as follows:

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

Paragraph 1. There is added after the final sentence in § 1.301-1(1) the following new sentences:

§ 1.301-1 Rules applicable with respect to distributions of money and other property.

* * * * *

(1) * * * Similarly, a distribution to shareholders with respect to their stock may be within the terms of section 301 although it takes the form of a payment by an employee stock ownership plan in exchange for stock of a corporation which makes available to the plan, or guarantees the repayment of, funds used by such plan for the payment to the shareholder. For example, if an employee stock ownership plan borrows funds which are guaranteed by an employer corporation under a program by which the corporation will make contributions in repayment of the loan, and if the proceeds of the loan are used to acquire stock from a shareholder, such use may constitute an indirect distribution of property by the corporation to the shareholder to which section 301 applies, even though the plan is independent of the corporation.

PART 54—PENSION EXCISE TAXES

Par. 2. There is inserted in the appropriate place the following new section:

§ 54.4975-7 Other statutory exemptions.

(a) [Reserved]

(b) *Loans to employee stock ownership plans*—(1) *Introduction*—(i) *Scope.* Section 4975(d)(3) provides an exemption from the excise tax imposed under section 4975 (a) and (b) by reason of section 4975(c)(1) (A) through (D) for loans described in this paragraph to an employee stock ownership plan which are made by a disqualified person (within the meaning of section 4975(c)(2)) and for loans described in this paragraph to such plan which are guaranteed by a disqualified person. Section 4975(d)(3) does not provide an exemption for transactions under section 4975(c)(1)(E) (relating to fiduciaries dealing with the income or assets of plans in their own interest or for their own account) or under section 4975(c)(1)(F) (relating to fiduciaries receiving consideration for their own personal account from any party dealing with a plan in connection with a transaction involving the income or assets of the plan). Such fiduciary self-dealing would be a separate transaction not described in the statutory exemption. Thus, for example, a loan to an employee stock ownership plan by the trustee with respect to a plan is not within the scope of the exemption of section 4975(d)(3). However, such loan would not be a prohibited transaction under section 4975 (c)(1)(E) if such loan is arranged and approved on behalf of the plan by a fiduciary who is independent of and unrelated to the pending trustee, who is not a party to the loan transaction, and who has no other interest with respect to the transaction that may affect the exercise of such fiduciary's best judgment as a fiduciary. Similarly, a loan to an employee stock ownership plan which is guaranteed by the employer of employees covered by the plan who under the particular facts and circumstances is a fiduciary with respect to the plan is not within the scope of the exemption under section 4975(d)(3). However, such guarantee would not be a prohibited transaction under section 4975(c)(1)(E) if such transaction is arranged and approved on behalf of the plan by a fiduciary who is independent of and unrelated to both the lender and the employer, who is not a party to the transaction, and who has no other interest with respect to the transaction that may affect the exercise of such fiduciary's best judgment as a fiduciary.

(ii) *In general.* For purposes of this paragraph, the term "ESOP" refers to an employee stock ownership plan which meets the requirements of section 4975 (e)(7) and § 54.4975-11. A loan to a plan is described in this paragraph only if such loan is described in paragraph (b)(3) and (4) of this section. In addition, a loan described in paragraph (b)(4) of this section and the guarantee by a disqualified person of a loan described in paragraph (b)(3) of this section must be made during a plan year for which such plan is an ESOP and at the time such plan is an ESOP within the meaning of section 4975(e)(7) and § 54.4975-11. A loan is not described in this paragraph if it is made to a plan which is subsequently amended to become an ESOP unless such amendment is solely for the purpose of complying with section 401 (a). The fact that a loan to a plan which is either made or guaranteed by a disqualified person is not a loan described in this paragraph shall not affect the status of such plan as an ESOP if the requirements of section 4975(e)(7) and § 54.4975-11 are otherwise satisfied by such plan.

(2) *Requirements applicable to all loans*—(i) *Primary benefit*—(A) *In general.* Any loan described in this paragraph must be primarily for the benefit of the participants of the ESOP to which the loan is made and their beneficiaries. All the surrounding facts and circumstances will be considered in determining whether such loan is primarily for the benefit of the participants and beneficiaries of such ESOP. However, no loan will be determined to be primarily for the benefit of the participants and their beneficiaries unless the requirements of paragraph (b)(2)(i) (B), (C) and (D) of this section are met.

(B) *Use of loan proceeds*—(*1*) *In general.* Any proceeds of a loan described in this paragraph must within a reasonable time be used by the borrowing ESOP solely—

(*i*) To acquire qualifying employer securities (either equity or debt, including stocks, bonds, debentures, notes, or certificates or other evidences of indebtedness) within the meaning of section 4975 (e)(8) and § 54.4975-12, or

(*ii*) To repay such loan. Any equity security so acquired must satisfy the requirements of paragraph (b)(2)(i)(B) (*2*) or (*3*) of this section. In addition, in the case of unlisted securities acquired after September 30, 1976, such securities must be subject to a put option to the employer in accordance with paragraph (b)(2)(i)(B)(*6*) of this section. However, except as provided in paragraph (b)(2)(i)(B)(*6*) of this section, no security so acquired may be subject to any other put, call, or other option, or buy-sell or similar arrangement, or in the case of securities acquired after September 30, 1976, rights of first refusal.

(*2*) *Voting common stock.* Except as provided in paragraph (b)(2)(i)(B)(*3*) of this section, all common stock acquired with the proceeds of a loan described in this paragraph must be voting stock with unrestricted dividend rights (within the meaning of paragraph (b)(2)(i)(B)(*4*) of this section). Such stock must meet one of the following tests:

(*i*) The stock is part of, or identical to, a class of stock of which (prior to the transfer to the ESOP) at least 50 percent is owned by shareholders no one of whom owns more than 10 percent of the shares in such class of stock.

(*ii*) If there is only one class of stock, the stock acquired by the ESOP is part of or identical to shares in such class of stock or if there is more than one class of stock, then shares must be transferred to the ESOP, so that each class of stock transferred to the ESOP, as compared to all classes of stock transferred to the ESOP, is substantially in the proportion the fair market value of the total outstanding shares of the particular class bears to the aggregate fair market value of all outstanding classes of stock (both values excluding shares owned by the ESOP). This result will be obtained if the number of shares of stock in a particular class is in proportion to the number of shares of each and every other class of stock. For example, if there are two classes of stock, Class A and Class B, and if the fair market value of the outstanding shares of Class A and Class B stock are $100,000 and $200,000, respectively, and prior to the acquisition the ESOP has no interest in such stock, then such stock will meet the requirements of this (B) if the fair market value of the Class B stock it acquires is twice that of the Class A stock it acquires.

(*iii*) The stock is part of, or identical to, that existing class of stock having the greatest number of votes per unit of fair market value. For example, if there are two classes of stock, Class A and Class B, with a fair market value per share of $1 and $.50, respectively, and if the owner of each share of each class is entitled to one vote per share, than a share of Class B stock has the greatest number of votes per dollar of value (2 votes per $1 as compared to 1 vote per $1) and stock will meet the requirements of this (B) if it is part of, or identical to, a share in Class B.

(*3*) *Nonvoting common stock, preferred stock, and other equity securities.* An ESOP may acquire nonvoting common stock, preferred stock, or other equity securities not described in paragraph (b)(2)(i)(B)(2) of this section with the proceeds of a loan described in this paragraph if immediately following the purchase not more than 25 percent of the aggregate amount of securities issued in such issue and outstanding at the time of purchase by the ESOP is held by the ESOP and if at least 50 percent of such aggregate amount is held by persons independent of the issuer. The requirements of this (*3*) are similar to the requirements of section 503(e)(2) which are among the requirements made applicable by section 4975(e)(8)(B) in order for certain bonds, debentures, notes, or certificates or other evidences of indebtedness to be qualifying employer securities under section 4975(e)(8) and paragraph (b)(2)(i)(B)(*1*) of this section.

(*4*) *Unrestricted dividend rights.* For purposes of paragraph (b)(2)(i) of this section, the term "dividend rights" means rights to receive dividends as defined by the governing law of the State of incorporation of the corporation. Such rights are unrestricted if they are limited in no way other than as positively prescribed by statute in the State of incorporation.

(*5*) *Overall limitation on employer securities (other than certain common stock or convertible securities) acquired with loan proceeds.*—Immediately following the acquisition of a security with loan proceeds described in paragraph (b)(2)(i)(B)(*1*) of this section (other than common stock under paragraph (b)(2)(i)(B)(2) of this section or qualifying employer securities immediately convertible by, or by the direction of, the employee, at a reasonable conversion ratio into such common stock), not more than 25 percent of the ESOP assets can be invested in employer securities other than common stock under paragraph (b)(2)(i)(B)(2) or such convertible qualifying employer securities.

(*6*) *Put option.*—In the case of a security not listed on a national securities exchange, which is acquired after September 30, 1976, with the proceeds of a loan described in this paragraph, such security must be subject to a put to the employer that meets the requirements of this (*6*).

Such puts shall be exercisable only by participants or their beneficiaries or by persons to whom such securities are transferred by gift from participants or their beneficiaries or by reason of the death of such participants or beneficiaries. Also, such puts must be exercisable during a two-year period which begins on the date the employer securities are distributed to the participant or beneficiary. The price at which a put meeting the requirements of this (*6*) is exercisable is the fair market value of the security as of the date of exercise determined in accordance with paragraph (c)(5) of § 54.4975-11, and shall be paid in cash within a reasonable time from exercise.

(C) *Liability of ESOP for loan.*—A loan described in this paragraph must be without recourse against the ESOP. To the extent that such loan is secured by collateral of the ESOP, only qualifying employer securities purchased with the proceeds of such loan may be used as collateral. The terms of the loan must provide that neither the lender nor any other person entitled to any payment under the loan shall have any right to assets of the ESOP other than the collateral for the loan, contributions (other than contributions of employer securities) from the employer maintaining the ESOP which are made under a plan to make such contributions sufficient to meet the obligations of the ESOP under the loan, and earnings attributable to the investment of such contributions. The terms of such loan must also provide that payment of any amount with respect to such loan during a plan year shall be made by the ESOP only to the extent that the ESOP has received, during such plan year and prior to the time such payment is made, earnings described in this (C) and any contribution made by the employer maintaining the ESOP. Such contributions and earnings must be accounted for separately by the ESOP until the loan is repaid.

(D) *Default.* The terms of a loan described in this paragraph for which qualifying employer securities are used as collateral shall provide that, in the event of default upon such loan, the amount of such securities transferred to the lender in satisfaction of such loan shall not exceed the amount of such default. To the extent the transfer of such securities by a plan to a lender as a result of default on a loan described in this paragraph does not exceed the amount of the default, such transfer shall not be deemed to be a diversion prohibited by section 401(a)(2) and § 1.401-2.

(ii) *Reasonable rate of interest.*—Any loan described in this paragraph must be at not in excess of a reasonable rate of interest. All relevant factors shall be considered in determining a reasonable rate of interest, including the amount and duration of the loan, the security and guarantee (if any) involved, the credit standing of the ESOP and the guarantor (if any), and the interest rate prevailing for comparable loans.

(iii) *Deposit in suspense account*—(A) *General rule.*—The terms of a loan described in this paragraph shall provide that qualifying employer securities purchased with the proceeds of such loan be held in a suspense account by the ESOP until such securities are released from such suspense account as prescribed under paragraph (b)(2)(iii)(C) of this section and are allocated to the accounts of participants under § 54.4975-11(v).

(B) *Status of securities in suspense account.*—Except as otherwise provided in this paragraph and § 54.4975-11, qualifying employer securities purchased with the proceeds of a loan described in this paragraph shall be treated as assets of the ESOP for all purposes other than the determination of accrued benefits (within the meaning of section 411(a)(7) and the regulations thereunder) of employees under such plan and income from such securities must be either allocated to the accounts of participants, or if the plan so provides, used to repay the loan. Thus, for example, dividends and other income from such securities constitute income of the plan. As a further example, such securities are subject to the requirement of section 401(a)(2) and § 1.401-2 of this chapter that it be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under a trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of employees or their beneficiaries.

(C) *Release of securities from suspense account.*—The terms of a loan described in this paragraph shall provide that, if an amount of qualifying employer securities is placed in a suspense account under this (iii), such securities shall be released from the suspense account in equal annual amounts (not later than as of the end of each plan year) over the original duration of the loan, except that if at the end, of a particular year the aggregate amount of securities that would be released based upon loan payments to date exceeds the aggregate amount of securities actually released for prior years plus the amount of securities that would be released on an equal annual basis for such year, then in addition to the equal annual amount released for such year, such excess shall also be released for such year. Notwithstanding, the application of the preceding sentence to a prior year, the amount of securities to be released from the suspense account on an equal annual basis shall not be reduced by the application of the preceding sentence, unless all of the securities have been released from the account. A release based upon loan payments is based upon the ratio of payments of principal, fees and interest over the years since the making of the loan (including the present year) to total payments originally projected over the duration of the loan.

(iv) *Collateral for loan*—(A) *General rule.*—If a loan described in this paragraph is secured by assets of an ESOP, in order to meet the requirements of this paragraph the only assets which may be used as collateral for the loan must be all or part of the qualifying employer securities acquired with the proceeds from the loan. The use of qualifying employer securities as collateral for a loan described in this paragraph shall not be deemed to be a diversion prohibited by section 401(a)(2) and § 1.401-2 of this chapter.

(B) *Release of collateral.*—The terms of a loan described in this paragraph shall provide that plan assets be released from their status as collateral as necessary to permit the release of plan assets from the suspense account under paragraph (b)(2)(iii)(C) of this section for allocation to the accounts of participants under § 54.4975-11(c). The annual amount of collateral released under this (B) shall bear the same proportion to the total annual amount of assets released from the suspense account under paragraph (b)(2)(iii)(C) of this section as the original amount of plan assets pledged as security for the loan bears to the total amount of the loan. Thus, for example, if 40 percent of the assets acquired with the proceeds of a loan are pledged as collateral, as of the end of each year 40 percent of the assets released from the suspense account shall be released from collateral.

(v) *Other terms of loan.*—A loan described in this paragraph must be for a specific term. Such loan may not be payable on demand of the lender or any other person except in the case of default in the payment of principal and interest. The terms of the loan must permit the ESOP to prepay all or any part of the loan at any time without penalty.

(3) *Guarantee by disqualified person.*—A loan to an ESOP may be a loan described in this paragraph if such loan is guaranteed by a disqualified person. For purposes of this paragraph, the use of assets by a disqualified person as collateral for a loan is deemed to be a guarantee of such loan by such person.

(4) *Loan by disqualified person.*—A loan to an ESOP may be a loan described in this paragraph if such loan is made by a disqualified person. Such loan may be a direct loan of cash to be used by the ESOP to purchase qualifying employer securities or may be indirect, such as by means of the transfer of qualifying employer securities to the ESOP in exchange for notes payable by such ESOP. A loan under this paragraph also includes an assumption of the obligations of an ESOP under a loan by a disqualified person with respect to such ESOP.

(5) *Transitional rules.*—In the case of a loan to an ESOP which is made prior to and which is not a loan described in this paragraph, such loan shall be treated as a loan described in this paragraph for the entire period such loan is outstanding if the terms of such loan are amended prior to such date to conform such loan to the requirements of this paragraph as of such date. Any amendment of the terms of such loan for the purpose of meeting the requirements of this paragraph shall not be treated as a refinancing of such loan or the making of a second loan for purposes of § 54.4975-11.

Par. 3. There are inserted in the appropriate place the following new sections:

§ 54.4975-11 Definition of the term "employee stock ownership plan".

(a) *In general*—(1) *Definition.*—The term "employee stock ownership plan", as defined in section 4975(e)(7) and this section, means a defined contribution plan which is—

(i) A qualified stock bonus plan (as defined in § 1.401-1(b)(1)(iii) of this chapter), or

(ii) A qualified stock bonus plan and a qualified money purchase pension plan (within the meaning of § 1.401-1(b)(1)(i) of this chapter), which is designated by formal action of the employer maintaining such plan as an employee stock ownership plan consisting of the plan or plans described in paragraph (a)(1)(i) or (ii) of this section, which is designed to invest primarily under paragraph (b) of this section in qualifying employer securities (as defined in § 54.4975-12), and which meets all other requirements of this section. The term "ESOP" as used in this section refers to an employee stock ownership plan, as defined in section 4975(e)(7) and paragraph (a)(1) of this section. A plan does not constitute an ESOP if such plan is established and maintained by any employer which is not a corporation. An ESOP described in paragraph (a)(1)(ii) of this section may consist of one or more qualified stock bonus plans and one or more qualified money purchase pension plans. All stock bonus plans and money purchase pension plans designated by an employer as part of an ESOP shall have the same plan year.

(2) *Addition to other plan.*—An ESOP may form a portion of a plan the balance of which includes a qualified pension, profit-sharing, or stock bonus plan (as defined in § 1.401-1(a)(2) of this chapter) which is not an ESOP.

(3) *Conversion of existing plan to an ESOP.*—An existing pension, profit-sharing, or stock bonus plan may be converted into an ESOP. If such conversion occurs prior to the end of the plan year, the plan will be treated as an ESOP for the entire plan year solely for tax qualification purposes. For all other purposes, the plan will be treated as an ESOP on or after the date of such conversion and not as of a retroactive date. Whether a conversion constitutes a termination of an existing plan shall be determined under § 1.401-6 of this chapter.

(4) *Certain arrangements adversely affecting status of plan as an ESOP*—(i) *In general.*—Because an ESOP must be a qualified plan, it must at all times satisfy the requirements of section 401(a) of the Code, including the requirement that the plan must be for the exclusive benefit of the employees and their beneficiaries. (See section 401(a)(2) and the regulations thereunder.) A plan is not an ESOP unless, in addition to meeting the requirements prescribed elsewhere in this section, it also complies with paragraph (a)(4)(ii) of this section.

(ii) *Options to sell securities to ESOP.*—A plan is not an ESOP if it issues puts or otherwise obligates itself to acquire securities at an indefinite time determined upon the happening of an event such as the death of the holder of the securities.

(b) *Plan designed to invest primarily in qualifying employer securities*—(1) *In general.*—A plan constitutes an ESOP for a plan year only if the plan specifically states that it is designed to invest primarily in qualifying employer securities. Except as provided in paragraph (b)(2) of this section, the portion of an ESOP consisting of a stock bonus plan or a money purchase pension plan shall be treated the same as other stock bonus plans or money purchase pension plans qualified under section 401(a) with respect to the types of assets other than qualifying employer securities which may be held by such plans.

(2) *Investment in life insurance*—(i) *Policies having an ESOP designated as beneficiary.*—A plan that permits the purchase of life insurance policies having the plan designated as beneficiary (for example, key man insurance) shall not constitute an ESOP for a plan year if the face amount of such insurance so purchased by the plan exceeds the dollar value of qualifying employer securities held by the plan at the time of such purchase, if the plan fails to require the allocation of the proceeds of such insurance to the accounts of participants under paragraph (c)(4) of this section, or if the plan fails to prohibit the use of such proceeds for the purchase of employer securities or for the payment of a loan described in § 54.4975-7(b).

(ii) *Policies without an ESOP as designated beneficiary.*—An ESOP may provide for the purchase of incidental life insurance with proceeds payable to beneficiaries of employees participating in the ESOP if the aggregate of the life insurance premiums paid since the insurance was first provided for each participant does not exceed 25 percent of the dollar value of the participant's ESOP account at any particular time. This 25 percent limit applies to all types of insurance (whether term, ordinary life, or any other type).

(c) *Allocations to accounts of participants*—(1) *Contributions*—(i) *In general.*—Amounts contributed to an ESOP by a participant shall be allocated to the account of such participant as of the date of receipt by the trust through which the ESOP is funded. Amounts contributed to an ESOP by an employer for a plan year and forfeitures for such plan year shall be allocated to the account of each participant as of a date not later than the close of the plan year. Except as provided in paragraph (c)(2) of this section (relating to securities acquired with the proceeds of certain loans), all unallocated qualifying employer securities held by an ESOP as of the end of a plan year shall be allocated as of such time to the accounts of participants.

Qualifying employer securities received by an ESOP during a plan year with respect to a contribution by an employer for the preceding year shall be allocated to the accounts of participants as of the end of such preceding plan year. Except to the extent that a disproportionate allocation is required by the exercise of elections by participants as to the manner of investment of assets allocated to their accounts, there shall be allocated to the account of each participant entitled to share in allocations as of an allocation date the portion of each class of qualifying employer securities to be allocated as of such date which the amount to be allocated to the account of such participant bears to the total amount to be allocated to the accounts of all participants entitled to share in such allocation. Allocations of all assets other than qualifying employer securities shall be made on the basis of, and expressed in terms of, dollar value. Allocation of qualifying employer securities to the account of a participant shall include fractional rights to shares of stock or other applicable units of measure of other equity securities and, in the case of such securities other than stock or other equity securities, fractional interests in such qualifying employer securities.

(ii) *Allocation of qualifying employer securities on basis of dollar value.*—Except as provided in paragraph (c) (1) (iii) of this section, allocations of qualifying employer securities made under this paragraph shall be on the basis of dollar value but shall be expressed in terms of both dollar value and the number of shares of stock or other applicable units of measure of other equity securities, or the face amount of other qualifying employer securities, represented by such dollar value.

(iii) *Allocation of qualifying employer securities on basis other than dollar value.*—Allocations of qualifying employer securities made under this paragraph may be made on the basis of shares of stock if the ESOP provides that—

(A) Investments of the assets of such ESOP shall be only in shares of a single class of stock constituting qualifying employer securities,

(B) Each participant's account is credited with the number of full and fractional shares (or fractional rights to shares) of such stock purchased on his behalf, and

(C) Distributions received by the plan with respect to such stock held for each participant are reinvested for such participant in shares of such stock, or on such other basis as may be found by the Commissioner or his delegate to be a reasonable method of allocating qualifying employer securities. In the case of a share allocation system permitted under this (iii), allocations of qualifying employer securities are not required to be expressed in terms of dollar value.

(iv) *Section 415 limitations.*—See section 415 and the regulations thereunder with respect to limitations on contributions to defined contribution plans, including ESOP's.

(2) *Securities acquired with proceeds of certain loans.*—Qualifying employer securities acquired with the proceeds of a loan described in § 54.4975–7(b) (3) and (4) shall be allocated when released from the suspense account as prescribed under § 54.4975–7(b) (2) (iii) (C). In the case of stock or other equity securities, the amount of such qualifying employer securities allocable for a plan year is measured in shares or other applicable units of measure. In the case of other qualifying employer securities, the amount of such qualifying employer securities allocable for a plan year is measured on the basis of the dollar value of such securities as of the date of receipt or acquisition thereof by the ESOP. Qualifying employer securities allocated under paragraph (c) (2) of this section shall be allocated to the accounts of participants in the same manner as the ESOP allocates qualifying employer securities under paragraph (c) (1) (ii) or (iii) of this section.

(3) *Income.* Dividends and other income from qualifying employer securities allocated to a participant's account shall be allocated to such participant's account. Except where allocations are made under paragraph (c) (1) (iii) of this section (on a basis other than dollar value), the account of each participant shall be adjusted as of a date not later than the end of each plan year to reflect separately the dollar value of qualifying employer securities specifically allocated to such account and the dollar value of such participants share of all other assets of the ESOP (other than qualifying employer securities held in a suspense account under paragraph (h) of this section) not specifically allocated to the accounts of participants.

(4) *Proceeds of life insurance.* The proceeds of life insurance contracts held by an ESOP shall be allocated as of the date of receipt by the trust through which such ESOP is funded as prescribed under paragraph (c) (1) of this section.

(5) *Valuation.* For purposes of § 54.4975–7(b) (2) (i) (B) (6) and this section, assets shall be valued on the basis of all relevant factors for determining fair market value. With respect to qualifying employer securities not listed on a national securities exchange that are acquired after September 30, 1976, an employer shall furnish an annual certificate of value to the ESOP. Each participant or beneficiary receiving a distribution of qualifying employer securities under the ESOP shall also receive at the time of such distrbution a copy of the most recent annual certificate and a copy of each annual certificate thereafter until the put option described in § 54.4975–7(b) (2) (i) (B) (6), relating to the use of the proceeds of a loan under section 4975(d) (3), has expired with respect to qualifying employer securities received in such distribution.

(d) *Exercise of rights*—(1) *General rules*—(i) *Direction by participants.* A plan shall not constitute an ESOP unless all the requirements of this paragraph are satisfied. The exercise of rights by a designated fiduciary at the direction of a participant (or the failure to exercise such rights in the absence of direction by a participant) shall not be deemed to be other than for the exclusive benefit of employees and their beneficiaries. The requirements of this paragraph shall not be met if the designated fiduciary makes any recommendation regarding the manner of exercising any rights, including whether or not such rights should be exercised.

(ii) *Definition of "designated fiduciary".* For purposes of this paragraph, the term "designated fiduciary" means the person designated by a plan to exercise rights with respect to qualifying employer securities held by the plan. Such person may be the trustee, the plan administrator, or other person designated for such purpose.

(2) *Voting rights.* (i) In order to meet the requirements of this paragraph, the plan must provide that each participant is entitled to direct a designated fiduciary as to the manner in which any employer security allocated to the account of such participant is to be voted. The designated fiduciary shall notify participants of each occasion for the exercise of voting rights within a reasonable time (not less than 30 days) before such rights are to be exercised. This notification shall include all information distributed to shareholders by the corporation regarding the exercise of such rights.

(ii) Participants must be permitted to vote fractional shares (or fractional rights to shares). This requirement is satisfied if the designated fiduciary votes the combined fractional shares (or fractional rights to shares) to the extent possible to reflect the direction of the participants holding fractional shares (or fractional rights to shares).

(iii) If a participant does not direct the designated fiduciary in whole or in part with respect to the exercise of voting rights arising under employer securities allocated to his account, such voting rights shall be exercised only to the extent directed by participants.

(iv) The plan need not permit employees to direct the voting of unallocated securities held by the trust.

(3) *Rights other than voting rights.* The plan shall provide that each participant is entitled to direct the exercise of rights other than voting rights in the manner prescribed with respect to voting rights under paragraph (d) (2) of this section.

(e) *Multiple plans.* Notwithstanding the provisions of § 1.410(b)–1(d) (3) (i) of this chapter [as proposed], a plan designated as constituting an ESOP or part of an ESOP shall not be designated as one of two or more plans (including any other plan designated as constituting part of the same ESOP) constituting a single plan which is intended to qualify for purposes of section 410(b) (1) and § 1.410(b)–1 of this chapter.

(f) *Distributions.* Benefits distributable from the portion of an ESOP consisting of a stock bonus plan are distributable in stock of the employer. See § 1.401–1 (a) (2) (iii) and (b) (1) (iii) of this chapter. All qualifying employer securities allocated to the account of a participant under an ESOP (including such securities allocated to such account under a qualifying money purchase pension plan forming a portion of such ESOP) shall be distributed to such participant prior to the distribution of other qualifying employer securities to such participant. Except as required by the preceding sentence, benefits distributable from the portion of an ESOP consisting of a qualified money purchase pension plan may be, but are not required to be, distributable in qualifying employer securities. A portion of an ESOP consisting of a stock bonus or money purchase pension plan shall not be distinguished from other stock bonus or money purchase pension plans qualified under section 401(a) with respect to distributions to participants prior to death, separation from service, or termination of such ESOP.

(g) *Forfeitures.* (1) In the event that any portion of the account of a participant under an ESOP is forfeited, the participant shall be treated as forfeiting qualifying employer securities only to the extent that the amount forfeited exceeds the value of the participant's share of assets of the ESOP other than qualifying employer securities.

(2) If a participant is treated as forfeiting any amount of qualifying employer securities allocated to his account and if more than one class of such securities is allocated to his account, he shall be treated as forfeiting the same portion of each such class of securities.

(h) *Qualifying employer securities acquired with the proceeds of certain loans*—(1) *In general.* Under section 4975(d)(3) and § 54.4975-7(b), a disqualified person, under certain circumstances, may make a loan to a plan which constitutes an ESOP for the plan year in which loan is made or may guarantee a loan made to a plan if the plan is an ESOP for the plan year in which such guarantee is made. A plan shall constitute an ESOP for such plan year only if the plan meets the requirements of paragraph (h) (2), (3) and (4) of this section.

(2) *Creation of suspense account.* To be an ESOP, a plan must provide that qualifying employer securities purchased with the proceeds of a loan described in § 54.4975-7(b) shall be held in a suspense account by the ESOP as provided under § 54.4975-7(b) (2) (iii) (C) and are allocated to the accounts of participants, under paragraph (c) of this section.

(3) *Collateral for certain loans.* To be an ESOP, a plan must provide that qualifying employer securities may be pledged as collateral for a loan described in § 54.4975-7(b) only if the requirements of § 54.4975-7(b) (2) (iv) are met.

(4) *Default.* To be an ESOP, a plan must provide that in the case of default with respect to a loan described in § 54.-4975-7(b) the requirements of § 54.4975-7(b) (2) (i) (D) must be met.

§ 54.4975-2 Definition of the term "qualifying employer security".

(a) *In general.* For purposes of section 4975(e) (8) and this section, the term "qualifying employer security" means an employer security which is—

(1) Stock or otherwise an equity security, or

(2) A bond, debenture, note, or certificate or other evidence of indebtedness which is described in paragraphs (1), (2), and (3) of section 503(e).

(b) *Special rule.* In determining whether a bond, debenture, note, or certificate or other evidence of indebtedness is described in paragraphs (1), (2), and (3) of section 503(e), any organization described in section 401(a) shall be treated as an organization subject to the provisions of section 503.

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[26 CFR Part 54]

EXCISE TAX

Exemptions for Provision of Services and Office Space to Employee Benefit Plans, Investment of Plan Assets in Bank Deposits, and Provision of Bank Ancillary Services to Plans, and Transitional Rule for Provision of Services to Plans

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by September 23, 1976.

Pursuant to 26 CFR 601.601(b), designations of materials as confidential or not to be disclosed contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rulemaking is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d) (9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by September 23, 1976. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. Such a public hearing would be held jointly with the Department of Labor. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

PREAMBLE

Sections 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) impose excise taxes on disqualified persons who engage in transactions with employee benefit plans which constitute "prohibited transactions" as defined in section 4975(c) (1). Section 4975(d) contains exemptions from that definition, and section 2003(c) (2) of the Employee Retirement Income Security Act of 1974 (the Act) contains transitional rules which delay the effective date of section 4975 for certain transactions. These proposed regulations explain certain of the exemptions and transitional rules which relate to the provision of services and office space to plans by disqualified persons, to the investment of plan assets in deposits of a bank or similar financial institution which is a disqualified person, and to the provision of ancillary services to a plan by a bank or similar financial institution which is a fiduciary with respect to the plan. By notice appearing in this issue of the FEDERAL REGISTER, the Department of Labor has announced that it has under consideration a proposal to adopt similar regulations.

Attention is called to § 54.49756(d), dealing with the exemption provided by Code section 4975(d) (6) for the provision to a plan of ancillary services by a bank or similar financial institution which is a fiduciary with respect to the plan. Paragraph (d) (3) of that section, dealing with requirements for specific guidelines, is reserved. It is expected that specific guidelines will be issued by the fiduciary institution, binding on it, and with which the provision of ancillary services must comply, that will prevent the fiduciary institution "from providing ancillary services in an unreasonable or excessive manner or in a manner that would be inconsistent with the best interests of the plan's participants and beneficiaries." See H.R. Rep. No. 93-1280, 93d Cong., 2d Sess., (1974) (Conference Report), at p. 315. The Internal Revenue Service would appreciate any comments and suggestions with respect to the content of such guidelines during the period for comment to this notice of proposed rulemaking. Such comments and suggestions will be considered in the preparation of a separate notice of proposed rulemaking setting forth proposed § 54.4975-6(d) (3) at a future date.

Attention is also called to § 54.4975-15(d), dealing with the transitional rule for the provision of services to plans until June 30, 1977, provided by Act section 2003(c) (2) (D). One of the requirements of the transitional rule is that the provision of services "* * * remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be * * *." This phrase is virtually identical with a phrase in section 101(l) (2) (C) of the Tax Reform Act of 1969, relating to the transitional rule delaying the effective date of the self-dealing rules of Code section 4941 for leases and loans between private foundations and disqualified persons. Act sections 2003(c)(2) (A) and (B) also contain the phrase. In § 53.4941(d)-4(c), the Internal Revenue Service interpreted this language to mean that, in general, a lease or loan must be renegotiated by the parties if failure to do so would result in the plan receiving less (or paying more) than it would have under a similar contract negotiated currently, even though the terms of the pre-existing contract do not permit either party to insist upon an adjustment of the contract terms. These proposed regulations set forth the same interpretation in § 54.4975-15(d) that is contained in § 53.4941(d)-4(c).

In this regard, it should be noted that the Department of Labor, in proposed 29 CFR 2550.414c-4 published in this issue of the FEDERAL REGISTER, interprets the same language (which also appears in Act section 414(c)(4) as part of transitional rules for prohibited transactions under sections 406 and 407 of the Act) to mean that a binding contract (or renewal thereof) for the provision of services to a plan by a party in interest (disqualified person) must be on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be as determined on the date of execution of the contract or renewal. Such a binding contract need not thereafter (until renewal) be renegotiated by the parties to reflect later developments (e.g., changing market prices), unless the plan, as if it were an unrelated party in a normal commercial setting, could be expected to insist upon a renegotiation or termination of a binding contract.

Because parallel provisions appear in both Act section 2003(c)(2)(D) (which is under the jurisdiction of the Internal Revenue Service) and Act section 414(c)(4) (which is under the jurisdiction of the Department of Labor), the two agencies will review public comments on these provisions and consult with each other before promulgating final regulations on this matter to the end of adopting a uniform rule, as they do with respect to all matters involving parallel statutory provisions.

With respect to the provision of services and office space to plans, the Internal Revenue Service has previously issued a Technical Information Release (TIR-1396, issued July 24, 1975) concerning certain aspects of section 4975(d)(10) (relating to compensation for fiduciaries), and two Technical Information Releases (TIR-1329, issued December 31, 1974, and TIR-1399, issued August 18, 1975) to explain the scope of the transitional rule of section 2003(c)(2)(D) of the Act for the provision of services to plans by disqualified persons. In addition, pursuant to the authority set forth in section 408(a) of the Act and section 4975(c)(2) of the Code, the Department of Labor and the Internal Revenue Service have jointly granted administrative exemptions (1) respecting certain classes of transactions involving employee benefit plans and certain broker-dealers, reporting dealers and banks (Prohibited Transaction Exemption 75-1, 40 FR 50845, October 31, 1975), including, among others, transactions involving the provision of certain services, and (2) respecting certain transactions in which multiemployer and multiple employer plans are involved, including, among others, the furnishing of administrative services, office space and goods by such plans to disqualified persons (Prohibited Transaction Exemption 76-1, 41 FR 12740, March 26, 1976).

The agencies are also currently considering applications which have been filed for class exemptions which would permit, under certain limitations and conditions, persons who might be in a fiduciary status with respect to plans, to receive insurance commissions from insurance companies on sales of insurance to plans.

PROPOSED AMENDMENTS TO THE REGULATIONS

Accordingly, it is proposed to amend Part 54 of Title 26 of the Code of Federal Regulations as set forth below:

PARAGRAPH 1. Section 54.4975-6 is inserted in the appropriate place to read as set forth below:

§ 54.4975-6 Statutory exemptions for services and office space and certain transactions involving financial institutions.

(a) *In general.* Sections 4975(c)(1)(A), (C) and (D) provide that the term "prohibited transaction" means, among other things, any direct or indirect leasing of property between a plan and a disqualified person, any direct or indirect furnishing of goods, services, or facilities between a plan and a disqualified person, or any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan. Section 4975(c)(1)(E) provides that fiduciaries shall not deal with the income or assets of a plan in their own interest or for their own account, and section 4975(c)(1)(F) provides that fiduciaries shall not receive any consideration for their own personal account from any party dealing with a plan in connection with a transaction involving the income or assets of the plan. Section 4975(e)(2)(A) provides that a fiduciary is a disqualified person. Section 4975(e)(2)(B) provides that a person providing services to a plan is a disqualified person. Sections 4975(d)(2) and (10) provide conditions under which disqualified persons may furnish services or office space to plans and receive reasonable compensation therefor. In addition, sections 2003(c)(2)(B) and (D) of the Employee Retirement Income Security Act of 1974 (88 Stat. 978) (the Act) provide that section 4975 shall not apply to certain leases and provisions of services to plans during transitional periods which were established by Congress to allow plans and disqualified persons time to make new arrangements or to seek administrative exemptions under section 4975(c)(2). This section and §§ 54.4975-3 and 54.-4975-15 (b) and (d) clarify the interrelationship of these provisions.

(b) *Exemption for office space or services*—(1) *In general.* Subject to the conditions set forth in the flush language at the end of section 4975(d) (relating to transactions with owner-employees and related persons), section 4975(d)(2) allows any disqualified person, including a fiduciary, to provide a plan office space or services, including legal services, accounting services, or other services: *Provided*, That (i) such office space or services are necessary for the establishment or operation of the plan, (ii) such office space or services are furnished under a contract or arrangement which is reasonable, and (iii) no more than reasonable compensation is paid for the furnishing of the office space or services. Section 4975(d)(2) provides an exemption only for the provision of services or office space which are prohibited transactions under section 4975(c)(1)(A), (C), or (D). It does not provide an exemption from section 4975(c)(1)(E) (relating to fiduciaries dealing with the income or assets of plans in their own interest or for their own account) or from section 4975(c)(1)(F) (relating to fiduciaries receiving consideration for their own personal account from any party dealing with a plan in connection with a transaction involving the income or assets of the plan). Such fiduciary self-dealing would be a separate transaction not described in the statutory exemption.

Thus, a person who is a fiduciary with respect to a plan may not provide additional services to the plan and receive any compensation or other consideration in connection therewith, unless such provision of services is arranged and approved on behalf of the plan by a fiduciary who is independent of and unrelated to the fiduciary providing such services, who is not a party to such arrangement for the provision of services, who does not receive any compensation or other consideration with respect to such provision of services, and who has no other interest with respect to the transaction that might affect the exercise of such fiduciary's best judgment as a fiduciary. In addition, a fiduciary with respect to a plan may provide additional services to the plan without the arrangement and approval of an independent, unrelated fiduciary if the fiduciary providing such services receives no compensation or other consideration in connection with such provision of services (other than for reimbursement of expenses properly and actually incurred in the performance of such services). Generally, the provision of additional services to a plan by a fiduciary without the receipt of compensation or other consideration (other than reimbursement of expenses properly and actually incurred in the performance of such services) does not, in and of itself, constitute fiduciary self-dealing prohibited under section 4975(c)(1)(E).

(2) *Necessary service.* A service is necessary for the establishment or operation of a plan within the meaning of section 4975(d)(2) and paragraph (b)(1) of this section if it is of a type which is customarily furnished to plans of the kind in question in the ordinary course of their being established or operated. The term "necessary service" includes goods which are necessary for the establishment or operation of a plan and which are furnished to plans by service providers in the course of, and incidental to, their furnishing of services to plans.

(3) *Reasonable contract or arrangement.* For purposes of section 4975(d)(2) and paragraph (b)(1) of this section, no contract or arrangement is reasonable unless it permits the plan to terminate it without penalty to the plan on reasonably short notice under the circumstances so that the plan will not become locked into an arrangement that may become disadvantageous. For example, if a plan leases office space from a disqualified person under a long-term lease, the lease will generally not be an unreasonable arrangement merely because of its long term if it provides that the plan may terminate it without penalty to the plan on reasonably short notice under the circumstances notwithstanding the termination date set forth in the lease. Among the circumstances that would be considered in determining whether there is a reasonably short notice period for the termination of such a lease is the length of the notice period as compared to the length of the lease. For example, a one-year notice period would not be considered unreasonable for terminating a 20-year lease.

(4) *Reasonable compensation.* Section 4975 (d)(2) and paragraph (b)(1) of this section permit a plan to pay a disqualified person reasonable compensation for the provision of services or office space described in such section to the plan. Paragraph (f) of this section contains regulations relating to what constitutes reasonable compensation for the provision of services for purposes of this section.

(c) *Exemption for bank deposits.*—(1) *In general.* Subject to the conditions set forth in the flush language at the end of section 4975(d) (relating to transactions with owner-employees and related persons), section 4975(d)(4) exempts from the excise taxes imposed under section 4975, investment of all or a part of a plan's assets in deposits bearing a reasonable rate of interest with a bank or similar financial institution supervised by the United States or a State even though such bank or other institution is a fiduciary or other disqualified person with respect to the plan, if one of the conditions of this paragraph is met. Section 4975(d)(4) provides an exemption only for deposits in a bank or similar financial institution which are prohibited transactions under section 4975(c)(1)(A) through (E), because, by its terms, section 4975(d)(4) contemplates a bank or similar financial institution which is a fiduciary with respect to a plan investing plan assets in its own deposits under certain circumstances without the approval of an independent, unrelated fiduciary, if the conditions of section 4975 (d)(4) are met. It does not provide an exemption for the receipt by fiduciaries of any consideration for their own personal account from any party dealing with a plan in connection with a transaction involving the income or assets of the plan under section 4975(c)(1)(F). The receipt of such consideration would be a separate transaction not described in the statutory exemption.

(2) *Conditions.* (i) The plan is one which covers only the employees of the bank or other institution, the employees of any of its affiliates, or the employees of both,

(ii) The investment is expressly authorized by a provision of the plan, or

(iii) The investment is expressly authorized by a fiduciary of the plan (other than the bank or other institution or any of its affiliates) who is expressly empowered by the plan to so instruct the trustee with respect to such investment and who has no interest with respect to the transaction which might affect the exercise of such person's best judgment as a fiduciary.

(3) *Definitions.* (i) The term "bank or similar financial institution" includes a bank (as defined in section 581), a domestic building and loan association (as defined in section 7701(a)(19)), and a credit union (as defined in section 101(6) of the Federal Credit Union Act).

(ii) A person is an affiliate of a bank or other institution if such person and such bank or other institution would be treated as members of the same controlled group of corporations or as members of two or more trades or businesses under common control within the meaning of section 414 (b) or (c) and the regulations thereunder.

(iii) The term "deposits" includes a certificate of deposit issued by a bank or similar financial institution.

(4) *Other restrictions.* Even though the making of such investments is permitted under this paragraph, the general fiduciary duties of prudence and diversification of investments are still applicable. See section 404 of the Employee Retirement Income Security Act of 1974 (88 Stat. 978).

(d) *Exemption for ancillary bank services.*—(1) *In general.* Section 4975 (d)(2) and § 54.4975-6(b) (relating to an exemption for provision of office space or services), do not provide an exemption for an act described in section 4975 (c)(1)(E) (relating to fiduciaries dealing with plan assets in their own interest or for their own account) or section 4975 (c)(1)(F) (relating to the receipt of consideration by fiduciaries for their own personal account from any party dealing with a plan in connection with a transaction involving the income or assets of the plan). However, subject to the conditions set forth in the flush language at the end of section 4975(d) (relating to transactions with owner-employees and related persons), section 4975(d)(6) exempts from the excise taxes imposed under section 4975 the provision of certain ancillary services by a bank or similar financial institution (as defined in paragraph (c)(3)(i) of this section) supervised by the United States or a State to a plan for which it acts as a fiduciary, provided certain conditions in paragraph (d)(2) of this section are met, even though the provision of such services might otherwise constitute an act described in section 4975(c)(1)(E) (relating to fiduciaries dealing with plan assets in their own interest or for their own account) because, by its terms, section 4975(d)(6) contemplates a bank or similar financial institution which is a fiduciary with respect to a plan providing such services to the plan without the approval of an independent, unrelated fiduciary, if the conditions of section 4975(d)(6) are met. Thus, for example, plan assets held by a fiduciary bank which are reasonably expected to be needed to satisfy current plan expenses may be placed by the bank in a non-interest bearing checking account in the bank if the conditions of paragraph (d)(2) of this section are met, notwithstanding the provisions of section 4975(d)(4) (relating to investments in bank deposits). Section 4975(d)(6) does not, however, provide an exemption for the receipt by fiduciaries of any consideration for their own personal account from any party dealing with a plan in connection with a transaction involving the income or assets of the plan under section 4975(c)(1)(F). The receipt of such consdieration would be a separate transaction not described in the statutory exemption.

(2) *Conditions.* Such service must be provided—

(i) At not more than reasonable compensation,

(ii) Under adequate internal safeguards which assure that the provision of such service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority,

(iii) Only to the extent that such services are subject to specific guidelines issued by the bank or other institution which meet the requirements of paragraph (d)(3), and

(iv) Under an agreement which binds the bank or similar financial institution to comply with such guidelines.

(3) *Specific guidelines.* [Reserved]

(e) *Exemption for service as a fiduciary.* [Reserved] .

(f) *Exemption for compensation for services*—(1) *In general.* Subject to the conditions set forth in the flush language at the end of section 4975(d) (relating to trusts benefiting certain owner-employees), section 4975(d)(10) allows a plan to pay a disqualified person reasonable compensation for services rendered to a plan. Section 4975(d)(10) and paragraph (f)(2) of this section clarify what constitutes reasonable compensation for such services.

(2) *Reasonable compensation*—(i) *In general.* Whether compensation is "rea-

sonable" for purposes of this section and sections 4975(d) (2) and (10) depends on the particular facts and circumstances of each case.

(ii) *Payments to certain fiduciaries.* For purposes of this section and sections 4975(d) (2) and (10), the term "reasonable compensation" does not include any compensation to a fiduciary who is already receiving full-time pay from an employer or association of employers (any of whose employees are participants in the plan) or from an employee organization (any of whose members are participants in the plan), except for the reimbursement of expenses properly and actually incurred and not otherwise reimbursed. The restriction contained in this paragraph (b) (4) (ii) does not apply to a disqualified person who is not a fiduciary.

(iii) *Expense advances.* For purposes of this section and sections 4975(d)(2) and (10), the term "reasonable compensation", as applied to a fiduciary or an employee of a plan, includes an vance to such a fiduciary or employee by the plan to cover expenses to be properly and actually incurred by such person in the performance of such person's duties with the plan if—

(A) The amount of such advance is reasonable with respect to the amount of the expense which is likely to be properly and actually incurred in the immediate future (such as during the next month), and

(B) The fiduciary or employee accounts to the plan at the end of the period covered by the advance for the expenses actually incurred.

(iv) *Excessive compensation.* For purposes of this section and sections 4975(d) (2) and (10), any compensation which would be considered excessive under § 1.162-7 of this chapter (Income Tax Regulations relating to compensation for personal services which constitutes ordinary and necessary trade or business expenses) will not be "reasonable compensation". Depending upon the facts and circumstances of the particular situation, compensation which is not excessive under § 1.162-7 may, nevertheless, not be "reasonable compensation" within the meaning of this section and sections 4975(d) (2) and (10).

PAR. 2. Section 54.4975-15 is inserted in the appropriate place to read as follows:

§ 54.4975-15 Other transitional rules.

(a) [Reserved]
(b) [Reserved]
(c) [Reserved]

(d) *Provision of certain services until June 30, 1977*—(1) *In general.* Section 2003(c) (2) (D) of the Employee Retirement Income Security Act of 1974 (88 Stat. 987) (the Act) provides that section 4975 shall not apply to the provision of services before June 30, 1977, between a plan and a disqualified person if the three requirements contained in section 2003(c) (2) (D) of the Act are met. The first requirement is that such services must be provided either (i) under a binding contract in effect on July 1, 1974 (or pursuant to a renewal or modification of such contract), or (ii) by a disqualified person who ordinarily and customarily furnished such services on June 30, 1974. The second requirement is that the services be provided on terms that remain at least as favorable to the plan as a current arm's-length transaction with an unrelated party would be. The third requirement is that the provision of services must not be or have been, at the time of such provision, a prohibited transaction within the meaning of section 503(b) or the corresponding provisions of prior law. If these three requirements are met, section 4975 will apply neither to services provided before June 30, 1977, (both to customers to whom such services were being provided on June 30, 1974, and to new customers) nor to the receipt of compensation therefor.

Thus, if these three requirements are met, section 4975 will not apply until June 30, 1977, to the provision of services to a plan by a disqualified person (including a fiduciary) even if such services could not be furnished pursuant to the exemption provisions of sections 4975(d) (2) or (6) and § 54.4975-6. For example, if the three requirements of section 2003(c) (2) (D) of the Act are met, a person serving as fiduciary to a plan who already receives full-time pay from an employer or an association of employers, whose employees are participants in such plan, or from an employee organization whose members are participants in such plan, may continue to receive reasonable compensation from the plan for services rendered to the plan before June 30, 1977. Similarly, until June 30, 1977, a plan consultant who may be a fiduciary because of the nature of the consultative and administrative services being provided may, if these three requirements are met, continue to cause the sale of insurance to the plan and continue to receive commissions for such sales from the insurance company writing the policy.

(2) *Renewals or modifications of existing contracts.* A renewal or a modification of an existing contract is referred to in paragraph (d) (1) of this section only if any modifications of the terms of such contract are not substantial and the relative advantages of the modified contract, compared with contracts entered into at arm's-length with an unrelated person at the time of the renewal or modification, are at least as favorable to the plan as the relative advantages of the original contract, compared with contracts entered into at arm's-length with an unrelated person at the time of execution of the original contract. Such renewal or modification need not be provided for in the original contract; it may take place before or after the expiration of the original contract and at any time before June 30, 1977. Where, in a normal commercial setting, an unrelated party in the position of the plan could be expected to insist upon a renegotiation or termination of a binding contract, the plan must so act. Thus, for example, if a disqualified person provides services to a plan on a month-to-month basis, and a party in the position of the plan could be expected to renegotiate the price paid under such contract because of a decline in the fair market value of such services, the plan must so act in order to avoid participation in a prohibited transaction. In addition, where the plan has no right to insist upon renegotiation, a prohibited transaction shall occur if the terms of the contract become less favorable to the plan than an arm's-length contract negotiated currently, unless—

(i) The variation from current fair market value is de minimis, or

(ii) The contract is renegotiated by the plan and the disqualified person so that the plan will pay no more than fair market value.

For purposes of paragraph (d) (2) (i), de minimis ordinarily shall be no more than 10 percent of the value of the services provided.

(3) *Persons deemed to be June 30, 1974, service providers.* A disqualified person with respect to a plan which did not, on June 30, 1974, ordinarily and customarily furnish a particular service, will nevertheless be considered to have ordinarily and customarily furnished such service on June 30, 1974, for purposes of this section and sections 2003 (c) (2) (D) of the Act, if either of the following conditions are met:

(i) At least 50 percent of the outstanding beneficial interests of such disqualified person are owned directly or through one or more intermediaries by the same person or persons who owned, directly or through one or more intermediaries, at least 50 percent of the outstanding beneficial interests of a person who ordinarily and customarily furnished such service on June 30, 1974; or

(ii) Control or the power to exercise a controlling influence over the management and policies of such disqualified person is possessed, directly or through one or more intermediaries, by the same person or persons who possessed, directly or through one or more intermediaries, control or the power to exercise a controlling influence over the management and policies of a person who ordinarily and customarily furnished such service on June 30, 1974.

For purposes of this paragraph (d) (3), a person shall be deemed to be an "intermediary" of another person if at least 50 percent of the outstanding beneficial interests of such person are owned by such other person, directly or indirectly, or if such other person controls or has the power to exercise a controlling influence over the management and policies of such person.

(4) *Examples.* The following examples apply the principles enunciated in paragraph (d) (3) this section.

Example (1). A owns 50 percent of the outstanding beneficial interests of ABC Partnership which ordinarily and customarily furnished certain services on June 30, 1974. On July 2, 1974, ABC Partnership was incorporated into ABC Corporation with one class of stock outstanding. A owns 50 percent of the shares of such stock. ABC Corporation furnishes the same services that were furnished by ABC Partnership on June 30, 1974. ABC Corporation will be deemed to have ordinarily and customarily furnished such services on June 30, 1974, for purposes of section 2003(c)(2)(D) of the Act.

Example (2). A and B together own 100 percent of the beneficial interests of AB Partnership, which ordinarily and customarily furnished certain services on June 30, 1974. On September 1, 1974, AB Partnership was incorporated into AB Corporation with one class of stock outstanding. A and B each own 20 percent of such outstanding class of stock and together have control over the management and policies of AB Corporation. AB Corporation furnishes the same services that were furnished by AB Partnership on June 30, 1974. AB Corporation will be deemed to have ordinarily and customarily furnished such services on June 30, 1974, for purposes of section 2003(c)(2)(D) of the Act.

Example (3). On June 30, 1974, M Corporation was ordinarily and customarily furnishing certain services. On that date, X, Y and Z together owned 50 percent of all classes of the outstanding shares of M Corporation. On January 28, 1975, all of the shareholders of M Corporation exchanged their shares in M Corporation for shares of a new N Corporation. As a result of that exchange, X, Y and Z together own 50 percent of the common stock of N Corporation, the only class of N Corporation stock outstanding after the exchange. N Corporation furnishes the services formerly furnished by M Corporation. N Corporation will be deemed to have ordinarily and customarily furnished such services on June 30, 1974, for purposes of section 2003(c)(2)(D) of the Act.

Example (4). I Corporation ordinarily and customarily furnished certain services on June 30, 1974. On November 3, 1975, I Corporation organizes a wholly owned subsidiary, S Corporation, which furnishes the same services ordinarily and customarily furnished by I Corporation on June 30, 1974. S Corporation will be deemed to have ordinarily and customarily furnished such services on June 30, 1974, for purposes of section 2003(c)(2)(D) of the Act.

Example (5). X Corporation, wholly-owned and controlled by A, ordinarily and customarily furnished certain services on June 30, 1974. Y Corporation did not perform such services on that date. On January 2, 1976, X Corporation is merged into Y Corporation and, although A received less than 50 percent of the total outstanding shares of Y Corporation, after such merger A has control over the management and policies of Y Corporation. Y Corporation furnishes the same services that were formerly furnished by X Corporation. Y Corporation will be deemed to have ordinarily and customarily furnished such services on June 30, 1974, for purposes of section 2003(c)(2)(D) of the Act.

[FR Doc.76-22801 Filed 7-27-76;10:31 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 253]

DEVELOPMENT AND USE OF NON-GOVERNMENT STANDARDS

Proposed Rulemaking

The Department of Defense publishes this proposed regulation under the authority of 5 U.S.C. 301 and 10 U.S.C. 2451 through 2456.

The Department of Defense proposes to establish formal procedures to integrate, on a voluntary basis, the rosters and lists of technical committees engaged in the development of voluntary specifications and standards. The purpose of the rosters and lists is to give visibility to the work and to provide a rational basis for individuals and organizations to determine their interest and need for participating in the standards groups, thereby encouraging participation commensurate with expected benefits.

The Department of Defense invites comments from federal, state, and local government agencies and from individuals as well as from industry associations, professional societies and organization engaged in the development and promulgation of consensus product specifications and standards. Comments should include recommended textual substitutions as well as the basis for the recommended changes. All comments received on or before August 30, 1976, will be considered in the final rules. Submissions should be addressed to the Director, Defense Materiel Specifications and Standards Office (DMSSO), Cameron Station, Alexandria, Virginia, 22314.

All comments in response to this proposal will be available for public inspection during normal business hours at the foregoing address.

The proposed Part 253 reads as follows:

PART 253—DEVELOPMENT AND USE OF NON-GOVERNMENT STANDARDS

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 2451 through 2456.

§ 253.1 Purpose.

This part: (a) Amplifies the policies of DoD Directive 4120.3, "Department of Defense Standardization Program," June 6, 1973,[1] governing the development and use of specifications and standards; (b) Places emphasis on the Department of Defense participation in the development of specifications and standards by the non-government associations, institutes and professional societies; and (c) Provides guidance for the use of Federal and Military specifications and standards for commercial products where acceptable non-government documents do not exist.

§ 253.2 Applicability and scope.

This Part applies to the Military Departments and Defense Agencies (hereinafter referred to as "DoD Components") which develop specifications, standards and purchase descriptions under the provisions of DoD Directive 4120.3[1] and Defense Standardization Manual 4120.3-M,[2] "Standardization Policies, Procedures and Instructions," January 1972, and to personnel who participate in the activities of non-government bodies as defined by DoD Directive 5500.2, "Policies Governing Participation of Department of Defense Components and Personnel in Activities of Private Associations," August 4, 1972 (37 FR 16674, August 18, 1972), as "private associations."

§ 253.3 Definitions.

As used in this part, non-government specifications and standards are those developed by nationally recognized industry associations, non-government standards organizations and professional technical societies using the consensus method and whose technical committees are appropriately balanced (permitting participation by public interest groups, local/state/federal government, private persons).

§ 253.4 General.

The Department of Defense is placing increased emphasis on the use of commercial products and the use of common commercial items in the manufacture of military materiel. One method for achieving this objective is to facilitate the use of specifications and standards developed by nationally organized non-government standards bodies which mainly serve the private sector. Closer coordination and cooperation between the DoD and the non-government groups will enhance the availability and applicability of non-government standards to DoD use. Also, a major objective is to reduce overlapping, duplicative and conflicting documents generated separately by the DoD and industry groups. In the broad picture, the concept is a move toward a national voluntary standards program.

§ 253.5 Policy and guidance.

(a) In accordance with DoD Directive 4120.3,[1] it is desired that existing non-government specifications and standards be adopted and used in lieu of the development and promulgation of a new document when there is no substantial or demonstrable advantage to the DoD in the development of a new document. The advantage shall be determined by comparison in terms of costs, logistic support, performance requirements, quality control and usable life of the item under existing specifications versus the proposed new military specification or purchase description. Duplications in the military series and non-government standards are to be avoided.

(b) Adopted non-government specifications or standards shall be used in the design and the development of materiel and referenced in the preparation of military specifications or standards for materiel to the maximum extent practicable.

(c) DoD participation in the development and/or adoption of a non-government document (in accordance with De-

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[1] Filed as part of original. Extra copies available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attn: Code 300.

[2] Filed as part of original.

fense Standardization Manual 4120.3–M)[2] for items common to those available commercially is preferred to the development of a new, or revision of a, federal or military specification, standard or purchase description. However, military or federal series documents will be developed and used in the event that essential requirements are not included in the development of non-government documents.

(d) Specifications developed by DoD Components for commercially available equipments, parts and materials shall be in a simplified form. Such specifications will be limited to the minimum essential physical, functional and quality assurance requirements which are important to the intended use of the item.

NOTE.—Specifications for unique military materiel shall conform to the policies and procedures governing the development of the military series of specifications in accordance with Defense Standardization Manual 4120.3–M).[2]

(e) DoD Components shall actively participate in the technical aspects of industry associations, institutes and professional societies engaged in the promulgation of non-government standards to the extent of their interest (DoD Directive 5500.2) and within the limits of prudent use of manpower and fiscal resources. Participation will normally be limited to assignee activities, military coordinating activites (preparing activity) and custodians.

§ 253.6 **Responsibilities.**

(a) DoD Standardization Assignee Activities for Federal Supply Classes and Areas, in cooperation with the preparing activities and military coordination activities (Defense Standardization Manual 4120.3–M)[2] shall develop and maintain a roster of DoD personnel participating in the development of standards on non-government task groups and committees. Further, within the scope of their respective assignments, they shall initiate standardization projects to adopt the non-government standards in which DoD Components have both interest and participating personnel. (Interest is defined as active participation on committees and/or submission of data, comments and balloting in the consensus process.) The above rosters and lists shall be furnished to the Defense Materiel Specifications and Standards Office (DMSSO) as an annex to the Annual Report of Accomplishments, Reports Control Symbol DD–(I&L)SA–758, submitted by assignee activities.

(b) DMSSO shall integrate the lists and rosters. The consolidated list and roster shall be combined with the lists and rosters obtained from non-government standards bodies, resulting in a single national standardization projects list. As appropriate, the military coordinating activity for non-government projects will be identified on the consolidated project list.

(c) The military coordinating activity shall initiate action for adoption of non-government documents simultaneous with the issuance of the document by its parent standards body. Under these circumstances where the document was subjected to broad intra-Dod coordination during its development, recoordination under provisions of Defense Standardization Manual 4120.3–M[2] is not required. The military coordinating activity shall initiate action to adopt the document in accordance with the provisions of Defense Standardization Manual 4120.3–M[2] in the event that DoD participation in the document development was minimal.

§ 253.7 **Effective date and implementation.**

This part is effective immediately. The Defense Standardization Manual 4120.3–M[2] shall be revised within 90 days, after publication of final rules, to provide uniform implementing procedures.

Dated: July 26, 1976.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

[FR Doc.76–22099 Filed 7–29–76;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

STANDARDS FOR GRADES OF FROZEN PEAS

Proposed Revision

Notice is hereby given that the United States Department of Agriculture is considering revising the United States Standards for Grades of Frozen Peas.

These grade standards are issued under the authority of the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090, as amended; (7 U.S.C. 1624)), which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use by producers, buyers, and consumers. Official grading services are also provided under this Act upon request of the applicant and upon payment of a fee to cover the cost of such services.

All person who desire to submit written data, views, or arguments for consideration in connection with the proposal should file same in duplicate not later than September 30, 1976 with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

(NOTE.—Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.)

STATEMENT OF CONSIDERATION LEADING TO THE PROPOSED REVISION

The current grade standards for frozen peas were last revised in 1959. Since that time international standards for frozen peas have been issued by the Codex Alimentarius Commission. The U.S. Food and Drug Administration (FDA) has promulgated standards of identity and minimum standards of quality for frozen peas taken for the most part from the international standards. The FDA Standards became effective December 31, 1974. These developments along with changes in packing practices suggest a need for re-evaluating the quality requirements of the current standards.

It is proposed to bring the USDA grade standards in line with the FDA minimum standards of quality. The FDA standards of quality affect only the Grade C level of the USDA standards.

The proposed revision would:

(1) Increase slightly the allowances for blemished peas, seriously blemished peas, and blond or cream colored peas in the Grade C classification;

(2) Decrease slightly the allowances for pea fragments in the Grade C classification;

(3) Decrease slightly the percentage of peas that may sink in a 16% salt brine solution in the factor of "maturity" in the Grade C classification;

(4) Eliminate the dual grade nomenclature such as "U.S. Fancy," "U.S. Extra Standard," and "U.S. Standard." Only the letter grade nomenclature would be retained. This is in keeping with the Department's policy to simplify grade nomenclature;

(5) Provide double brining requirements in the Grades A and B classifications for the factor of maturity. Current standards provide requirements for only one brine in each of the grade classifications with no restrictions on the maturity of the peas that sink. The proposal would be more restrictive on the maturity of peas that sink in the 13 percent brine for Grade A and 15 percent brine for Grade B; and

(6) Change the format of the current standards by using the attributes concept which would:

(a) Provide for a standard sample unit size;

(b) Classify the various types of defects according to severity;

(c) Set each defect classification to specific AQL's (acceptable quality levels);

(d) Provide acceptance sampling plans, one set designed for lot inspection and one set designed solely for online inspection, both geared to the sample unit size, AQL's and known degree of reliability; and

(e) Elminate the scoring system.

The attributes concept was requested by the American Frozen Food Institute. Based on sound statistical principles—the attributes standards are better adapted to in-plant quality control than conventional standards. They are equally applicable to lot inspection and provide a greater degree of reliability with respect to acceptance sampling.

The proposed revision to this subpart of 7 CFR Part 52 is as follows: