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WHAT IT IS AND HOW TO USE IT

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

HOUSTON, TX

WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
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WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

Contents

Federal Register
Vol. 52, No. 36-37
Wednesday, February 25, 1987

EDITORIAL NOTE: The February 24, 1987, Federal Register issue was not published because Federal Government offices in Washington, DC, were closed due to a severe snowstorm. Documents scheduled to be published on February 24, 1987, are published in today's issue, which is designated number 36-37 of volume 52.

Administrative Conference of the United States
NOTICES
Meetings:
Rulemaking Committee, 5565

Agricultural Marketing Service
RULES
Cranberries grown in Massachusetts et al., 5526
Potatoes (Irish) grown in Idaho and Oregon, 5529

Agriculture Department
See also Agricultural Marketing Service; Commodity Credit Corporation; Cooperative State Research Service; Food and Nutrition Service
NOTICES
Cooperative agreements:
University of Georgia, 5565
University of Wyoming, 5565

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 5568

Arts and Humanities, National Foundation
See National Foundation on the Arts and Humanities

Bicentennial of the United States Constitution Commission
See Commission on the Bicentennial of the United States Constitution

Centers for Disease Control
NOTICES
Committees; establishment, renewals, terminations, etc.:
Tuberculosis Elimination Advisory Committee, 5581

Coast Guard
RULES
Drawbridge operations:
Connecticut, 5536

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

Commission on the Bicentennial of the United States Constitution
RULES
Freedom of Information Act; implementation, 5542

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 5567

Commodity Credit Corporation
RULES
Export programs:
Processed agricultural commodities for donation; procurement, 5726

Cooperative State Research Service
NOTICES
Grants; availability, etc.:
Food and agricultural sciences national needs graduate fellowships grants program, 5653

Defense Department
See also Air Force Department; Defense Logistics Agency; Navy Department
NOTICES
Meetings:
Electron Devices Advisory Group, 5568

Defense Logistics Agency
NOTICES
Committees; establishment, renewals, terminations, etc.:
Government-Industry Federal Catalog System Item Name Policy Review Committee, 5568

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Toxic substances:
Asbestos abatement projects; worker protection, 5618
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Kansas, 5558, 5559
(2 documents)
Massachusetts, 5552
Michigan, 5553
Nebraska, 5554
New Mexico, 5556
Air quality planning purposes; designation of areas:
Ohio, 5560
Toxic substances:
Asbestos Hazard Emergency Response Act; implementation; correction, 5616
NOTICES
Meetings:
Asbestos Hazard Emergency Response Act; Negotiated Rulemaking Advisory Committee, 5578
FIFRA Scientific Advisory Panel, 5577
Science Advisory Board, 5577
(2 documents)
Pesticide programs:
Special review—
Diazinon, 5656

Pesticides; emergency exemption applications:
Metalaxyt, etc.; correction, 5616
Superfund program:
Uncontrolled hazardous waste sites; document and information availability, 5578
Toxic and hazardous substances control:
Premanufacture notices receipts; correction, 5616

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 5530, 5531
(2 documents)
PROPOSED RULES
Airworthiness directives:
Boeing, 5546

Federal Communications Commission
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 5579

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act) and Natural Gas Policy Act:
Ceiling prices; old gas pricing structure, 5533
NOTICES
Electric rate and corporate regulation filings:
Central Maine Power Co. et al., 5568
Meetings; Sunshine Act, 5614
Natural gas certificate filings:
Texas Eastern Transmission Corp. et al., 5569
Small power production and cogeneration facilities; qualifying status:
Kent County, MI, 5572
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 5572
Cities Service Oil & Gas Corp. et al., 5573
Conoco, Inc., 5573
El Paso Natural Gas Co., 5573
Florida Gas Transmission Co., 5574
Gulf Energy Marketing Co., 5574
Marathon Oil Co., 5574
Mobil Oil Corp. et al., 5575
Plains Petroleum Co. et al., 5575
Raton Gas Transmission Co., 5576
Sun Exploration & Production Co., 5576
Twin Falls Beaver Ranch, 5576

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Capital Shipping Corp. et al., 5579

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 5614
(2 documents)

Federal Reserve System
NOTICES
Electronic fund transfers:
Payment system risks—
Book-entry securities transfers, cap levels, "de minimis" caps, and inter-affiliate Fedwire transfer limits, 5581
Financial institutions acting as government securities brokers or dealers; Government Securities Act; implementation, 5723
Applications, hearings, determinations, etc.:
Bank of Granite Corp. et al., 5579
Chase Manhattan Corp. et al., 5580
Marine Midland Banks, Inc., et al., 5580

Food and Drug Administration
NOTICES
Medical devices:
Anesthesia apparatus checkout recommendations; availability, 5583
Medical devices; premarket approval:
Arzco Transesophageal Cardiac Stimulator Model 7, 5584
Diaphragm Pacer, 5585
Meetings:
Advisory committees, panels, etc., 5581

Food and Nutrition Service
RULES
Child nutrition programs:
Child care food program—
Appeals of actions based on Federal audits, 5525

General Services Administration
RULES
Property management:
Supply and procurement—
Waivers requests, 5536
Transportation and traffic management—
Carrier contractors for express small package transportation, 5536
Utilization and disposal—
Report of identical bids, 5542

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Meetings:
Long-Term Health Care Policies Task Force, 5585

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements:
Indian health professions preparatory and pregraduate scholarship programs and Indian health scholarship program, 5586

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Mutual mortgage insurance and rehabilitation loans—
Single family qualification requirements for veterans, 5533

NOTICES
Grants; availability, etc.:
Transitional housing demonstration program; proposed guidelines, 5587
Organization, functions, and authority delegations:
Assistant Secretary for Housing-Federal Housing Commissioner et al.; transitional housing demonstration program, 5587

Immigration and Naturalization Service
RULES
Aliens:
Deportability proceedings; authority extended, etc. Correction, 5616

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

International Trade Administration
RULES
Export licensing:
Commodity control list—
Human rights controls, 5532

Interstate Commerce Commission
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Bulk Carrier Conference, Inc., 5600

Justice Department
See also Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Booneville, IN, 5600

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Calista Corp., 5597

Libraries and Information Science, National Commission
NOTICES
Meetings; Sunshine Act, 5614

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
American President Lines, Ltd., 5612

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
North Atlantic; lease sales; supplemental call for information and nominations, 5598

National Capital Planning Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 5601

National Commission on Libraries and Information Science
See Libraries and Information Science, National Commission

National Foundation on the Arts and Humanities
NOTICES
Meetings:
Humanities Panel, 5601
(2 documents)

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Aiming pad configurations specified for sealed beam headlamps with circular lenses to be used on replaceable bulb headlamps, 5563

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic spiny lobster, 5564
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Alaska et al., 5567
Intent to evaluate performance, 5566
Meetings:
Gulf of Mexico Fishery Management Council, 5566
(2 documents)
North Pacific Fishery Management Council, 5566

National Park Service
NOTICES
Meetings:
Gates of the Arctic National Park Subsistence Resource Commission, 5598
National Register of Historic Places:
Pending nominations—
Arkansas et al., 5598

National Technical Information Service
NOTICES
Patent licenses, exclusive:
American Home Products Corp., 5567

Navy Department
RULES
Privacy Act; implementation, 5535

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
Periodic reports to Congress, 5602
Environmental statements; availability, etc.:
General Public Utilities Nuclear Corp. et al., 5602
Meetings:
Reactor Safeguards Advisory Committee, 5602
Meetings; Sunshine Act, 5614
Applications, hearings, determinations, etc.:
Gulf States Utilities Co., 5732

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 5601

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Fabius, AL, 5603

Postal Service
PROPOSED RULES
International Mail Manual:
Express Mail Service—
Indonesia, 5551

Presidential Documents
PROCLAMATIONS
Special observances:
Consumers Week, National (Proc. 5611), 5523

Public Health Service
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

Saint Lawrence Seaway Development Corporation
PROPOSED RULES
Tariff tolls
Correction, 5616

Securities and Exchange Commission
PROPOSED RULES
Securities:
Government Securities Act; implementation, revision of Form BD, etc., 5711
NOTICES
Agency information collection activities under OMB review, 5605
Meetings; Sunshine Act, 5615
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 5603
Pacific Stock Exchange, Inc., 5604
Philadelphia Stock Exchange, Inc., 5605
Applications, hearings, determinations, etc.:
Citibank, N.A., 5605
Citicorp, 5607
PaineWebber Investment Series et al., 5608

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 5609
Grants and cooperative agreements; availability, etc.:
Minority small business and capital ownership development; management and technical assistance, 5611
Applications, hearings, determinations, etc.:
Mezzanine Capital Corp., 5610

State Department
PROPOSED RULES
Consular services; fee schedules, 5549
NOTICES
Meetings:
International Radio Consultative Committee, 5612

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
Oklahoma, 5550

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration; Maritime Administration; National Highway Traffic Safety Administration; Saint Lawrence Seaway Development Corporation
PROPOSED RULES
Aviation proceedings:
Names of air carriers, etc.; use and change, 5547

Treasury Department
PROPOSED RULES
Government Securities Act; implementation, 5660
NOTICES
Agency information collection activities under OMB review, 5612

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Quest for Eternity: Chinese Ceramic Sculpture from the People's Republic of China, 5613

Separate Parts In This Issue

Part II
Environmental Protection Agency, 5618

Part III
Department of Agriculture, Cooperative State Research Service, 5653

Part IV
Environmental Protection Agency, 5656

Part V
Federal Reserve System; Securities and Exchange Commission; Treasury Department, 5660

Part VI
Department of Agriculture, Commodity Credit Corporation, 5726

Part VII
Nuclear Regulatory Commission, 5732

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamation:
5611 5523

7 CFR
226 5525
929 5526
945 5529
1496 5726

8 CFR
242 5616

14 CFR
39 (2 documents) 5530, 5531
Proposed Rules:
39 5546
215 5547
298 5547
389 5547

15 CFR
376 5532
399 5532

17 CFR
Proposed Rules:
Ch. IV 5660
240 5711
249 5711

18 CFR
154 5533
157 5533
270 5533
271 5533
284 5533

22 CFR
Proposed Rules:
22 5549
51 5549

24 CFR
203 5533
220 5533
226 5533

30 CFR
Proposed Rules:
936 5550

32 CFR
701 5535

33 CFR
117 5536
Proposed Rules:
402 5616

39 CFR
Proposed Rules:
10 5551

40 CFR
763 5618
Proposed Rules:
52 (6 documents) 5552–5559
81 5560
763 5616

41 CFR
101–26 5536
101–40 5536
101–47 5542

45 CFR
2005 5542

49 CFR
Proposed Rules:
571 5563

50 CFR
Proposed Rules:
640 5564

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

Presidential Documents

Title 3—

The President

Proclamation 5611 of February 19, 1987

National Consumers Week, 1987

By the President of the United States of America

A Proclamation

In the bicentennial year of the Constitution of the United States, it is appropriate that we reflect on the cherished freedoms and rights on which our open marketplace is founded. In recognition of the importance of the Constitution to American consumers in assuring us the many blessings we enjoy today, the theme for National Consumers Week 1987 shall be "Consumers Celebrate the Constitution."

Two hundred years ago, a group of patriots conceived the Constitution and thereby created the political, economic, and social framework for our Nation. As a result, many precious freedoms have been guaranteed to American citizens. Inherent in these is the freedom to produce, to sell, and to buy or not to buy.

Our competitive marketplace has flourished and become the most productive in the world, providing American consumers with unparalleled choices and opportunities. The goal of the Constitution's framers was to provide a free market in goods and services marked by creativity, by invention, and by the productivity of American workers.

We can be thankful today for the wisdom of our Founders. A functioning national market for goods and services with common money, standard weights and measures, reliable legal procedures respecting honest contracts, freedom from oppressive taxation, the encouragement of invention, and a dependable postal system were commonly recognized as needs in the debates of the Constitutional Convention. The resulting document, signed in Philadelphia in 1787, so effectively addressed those concerns that the same principles guide our modern economy.

These principles of freedom and fairness are the basis for consumer rights in the marketplace: the right to choose among products, services, and suppliers; the right to adequate information about what we buy; the right to expect that products offered for sale will conform to reasonable safety standards; the right to be heard; and the right to consumer education.

National Consumers Week 1987 is dedicated to reminding us that the exercise of these rights helps to maintain the vigor of our economic system—creating positive pressure for better products, services, and warranties—and that consumer education is a lifelong process.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning April 19, 1987, as National Consumers Week. I urge consumers, businesses, educators, community organizations, labor unions, the media, and government officials to identify, emphasize, and promote activities during National Consumers Week that draw attention to the consumer's rights under the Constitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of Feb., in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87–3948
Filed 2–20–87; 11:14 am]
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Rules and Regulations

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[Amdt. 16]

Child Care Food Program; Appeals of Actions Based on Federal Audits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Child Food Program (CCFP) regulations to permit State agencies to refuse to grant appeals of actions taken as a result of findings made by Federal audits. The rule further stipulates that if State agencies do not offer institutions an appeal at the State level in these instances, appeals will be afforded by the Department of Agriculture. This regulation implements a nondiscretionary provision included in Pub. L. 99–500 and 99–591 and will enhance the integrity of Federal audits while ensuring that institutions have appropriate avenues of administrative redress.

EFFECTIVE DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities because State agencies are not "small entities" as defined under the Act.

This final rule implements a provision included in Pub. L. 99–500 and 99–591 which is nondiscretionary. For this reason, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and 553(d), that prior notice and comment is unnecessary and contrary to the public interest and that good cause exists for making the rule effective upon publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretive rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584–0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related Notice published at 48 FR 29114, June 24, 1983.).

Background

Under the Child Care Food Program (CCFP), audits of participating public and nonprofit private institutions must be conducted in accordance with the Office of Management and Budget Circulars A–128 and A–110, respectively. Further, State agencies must conduct audits of proprietary Title XX institutions at least once every 2 years. In addition to these audits, program audits of institutions may be carried out by State agencies and the Department's Office of the Inspector General. Under current regulations, there is one group of audits—those conducted directly by the Department's Office of the Inspector General—that has created a unique situation which is addressed in section 361 of Pub. L. 99–500 and 99–591 and this final regulation. Specifically, § 226.14(b) of the CCFP regulations prohibits State agencies from disregarding overpayments or waiving collection actions against institutions arising from the findings of Federal audits. Moreover, § 226.6(j)(12) of the regulations specifies that if a State review official dismisses a claim based on a Federal audit, the State agency may be held liable for the loss. The Department's position in this area reflects the fact that once a Federal claim has been established against a State agency based on Federal audit findings, only the Department has the authority to adjust, settle, compromise or deny the claim.

Nevertheless, until the law was amended States were required to afford institutions the right to appeal any actions which could affect participation or reimbursement, including actions stemming from Federal audit findings. Consequently, there was some potential for a State to be placed in an untenable position when complying with Federal audit recommendations. If, for example, a State appeals officer were to rule against a State agency which was attempting to enforce an audit finding, that State agency could be subject to a recovery action by the Department and, at the same time, be prevented from taking a similar action against the institutions in question.

To remedy this potential for conflict, section 361 of Pub. L. 99–500 and 99–951, amended section 17(e) of the National School Lunch Act to stipulate that States would not be required to offer appeals of actions which arise from Federal audit findings. The amendment further provides that if States do not allow appeals in these situations, the institutions may appeal the actions to the Department. Since the Department has no latitude in implementing these legislative mandates, these provisions are being incorporated into the CCFP

regulations through a final rule without opportunity for public comment.

As a final note, the Department wishes to emphasize that the legislation in no way changed institutions' appeal rights with respect to any other adverse actions taken by State agencies. State agencies will continue to be required to allow appeals of all other adverse actions, including actions arising from the findings of audits performed in accordance with § 226.8 of the CCFP regulations, except for those conducted by the Department's Office of the Inspector General.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The Authority citation for Part 226 is revised to read as follows:

Authority: Sec. 361, Pub. L. 99–500 and 99–951 (42 U.S.C. 1766), secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

§ 226.6 [Amended]

2. Section 226.6 is amended by removing the word "Each" at the beginning of the first sentence of the introductory text of paragraph (j) and adding "Except as provided in § 226.8(g), each".

3. Section 226.8 is amended by adding a new paragraph (g), to read as follows:

§ 226.8 Audits.

* * * * *

(g) State agencies are not required to provide a hearing to an institution for State actions taken on the basis of a Federal audit determination. If a State agency does not provide a hearing in such situations, FNS will provide a hearing, upon request, in accordance with procedures set forth in § 226.6(j) of this part.

Dated: February 17, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87–3880 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in Massachusetts et al.; Increase in Base Quantity Reserve

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the base quantity reserve for the 1986–87 crop year from the required minimum of 2.0 percent to 7.24 percent of the total base quantities currently issued to cranberry growers, in order to update and expand base quantities for the benefit of growers. This should help to facilitate the appropriate and equitable operation of the cranberry marketing order with the establishment in the future of any marketable quantity and annual allotment. The rule also expands the criteria for determining a bona fide effort (i.e., a condition for the continuing validity of a grower's base quantity) to provide conditions under which a grower's base quantity may be reduced or cancelled. The rule is intended to ensure that base quantities remain with growers who have demonstrated a bona fide effort to produce and sell cranberries. The final rule is virtually identical to the proposal published in the August 21, 1986, **Federal Register**, with the exception of three adjustments. These adjustments include revising slightly the base quantity reserve percentage, delaying the implementation of the new bona fide effort requirement from 1987 to 1988, and expanding the criteria the committee considers on whether a grower has made a bona fide effort to produce and sell cranberries.

EFFECTIVE DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, Telephone (202) 447–5697.

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

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

The purpose of the FRA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder, pursuant to the Agricultural Marketing Agreement Act of 1937, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 31 handlers and 950 producers of cranberries under the marketing order will be subject to regulation during the course of the current season. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be characterized as small entities.

As discussed later in this document, the impact of this regulation will be on growers and will not be significant because the changes represent either a relaxation of restrictions (i.e., the increase in the base quantity reserve) or establishment of additional conditions to demonstrate that a producer is making a bona fide effort in the production and sales of cranberries necessary to retain base quantity under the terms of the order. We have examined various alternatives, including maintaining the current requirements, and have concluded that this amendment is the appropriate alternative. We also conclude that any potential costs to growers appear to be significantly offset when compared to the potential benefits of greater and more equitable allocation of allotment bases to growers. Finally, this final fule imposes no new reporting or recordkeeping requirements on the affected parties.

On August 21, 1986, notice was published in the **Federal Register** (51 FR 29936) to amend § 929.153 of Subpart—Rules and Regulations. Interested persons were invited to submit comments on the proposal. Four comments were filed with the Docket Clerk.

This final rule is issued under marketing agreement and Order No. 929, as amended (7 CFR Part 929). The order regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The agreement

and order are effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). This final rule is based on a recommendation by the Cranberry Marketing Committee (committee), comments received from interested persons, and other information.

Each year prior to May 1, the committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries necessary to meet the season's total market demand and provide for an adequate carryover of cranberries to the next season. If the Secretary finds from a recommendation of the committee, or from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of growers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity shall be apportioned among all eligible growers by applying an allotment percentage to each grower's base quantity, pursuant to § 929.48.

Such base quantities are issued to growers: (a) Based on their sales during the period 1968–69 through 1973–74; (b) as a result of transfers of base quantities from other growers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used for the issuance of base quantities to new growers and adjustments in base quantities for existing growers, with 25 percent being made available for new growers and 75 percent available for adjustments for existing growers. Any unallocated portion of the 25 percent available to new growers may, at the discretion of the committee, be prorated among eligible existing growers on an equitable basis.

On February 27–28, 1986, the Cranberry Marketing Committee held its annual winter meeting to formulate its marketing policy for the 1986–87 crop year. It determined that implementation of § 929.49 (i.e., the establishment of a marketable quantity and annual allotment) was not warranted. However, the committee noted that cranberry production was projected to exceed the total of all allotment bases and recommended that additional base be issued to all qualified new and existing growers to the full amount to which each grower is entitled, contingent on the grower's demonstrated ability to produce and sell cranberries. Such an increase would make additional quantities of base quantity available to new and existing growers. The committee said this change would also aid in the updating of base quantities which would be necessary for any future establishment of a marketable quantity and annual allotment.

In his comment, a Grayland, Washington, grower stated that no such increase is warranted because it is predicated on a projected increase in production. That is, the grower commented that the proposed increase in base quantities would only serve to encourage more production. He also stated that the demand for cranberries is growing at a slower rate than production. Moreover, the grower concluded that, in the event of any volume regulation, the large size of the total of all base quantities would result in a regulation which would be more burdensome on "smaller or average growers" than on larger growers. On review, however, the increase in base quantity is not based on projected production, but is based on a grower's demonstrated sales of cranberries. Moreover, in the event of volume regulation, the allotment percentage would be uniformly applied to all growers. Finally, the proposed increase in allotment bases should be considered in conjunction with the changes in bona fide effort requirements (discussed later in this document). The purpose of the changes in the bona fide effort requirements are to insure that base quantities remain with growers who have demonstrated a bona fide effort to produce and sell cranberries regardless of the size of their farming operations.

In its comment, the committee stated that, following a comprehensive review of computerized grower files, it was determined that discrepancies existed which necessitated a recomputation of the additional base quantity amount. The corrected figures represented 7.24 percent, or 237,249 barrels, of the total aggregate of base quantities held by all producers. (The proposed rule specified 7.74 percent, or 254,629 barrels). The committee noted that as recomputed the change in the allocation amount and corresponding percentage does not adversely affect the intent of the committee to allocate the full amount of additional base quantity to all qualified new and existing growers for which they are entitled, contingent on their demonstrated ability to produce and sell cranberries. Therefore, § 929.153(a) is established to provide for the 1986–87 crop year, the reserve base quantity shall be 7.24 percent.

Section 929.48, and § 929.153(d) which implements that section, provides that a condition for the continuing validity of a grower's base quantity is the production of cranberries in a proprietary capacity. If no bona fide effort is made to produce and sell cranberries thereunder for five consecutive seasons, commencing with the 1978–79 season, the base quantity may be reduced or declared invalid due to lack of use and cancelled at the end of the fifth season of nonproduction. Section 929.48 also provides that the committee shall establish criteria, subject to approval by the Secretary, whereby the committee may determine whether a bona fide effort has been made to produce and sell cranberries produced on the grower's own acreage.

In order to assure that base quantities are held by growers who have demonstrated their ability to produce and sell cranberries on their established acreage, and to prepare for any future recommendation for a marketable quantity and annual allotment, the committee recommended stricter criteria for determining bona fide effort. The committee observed that its proposal was intended as a means to treat all cranberry growers in an equitable manner since base quantities would remain only with growers who demonstrate a bone fide effort and who are not merely holding base quantities in anticipation of any future volume regulation. Such a practice is unfair to growers who are currently producing and selling cranberries to the full extent of their base quantities. The committee's proposal was intended to apply criteria which would recognize certain factors characteristic of cranberry production which are beyond the control of growers using accepted normal cultural practices. Such characteristic factors include: (1) Fluctuations in quantity and quality caused by weather, disease and other natural phenomena beyond a grower's control; and (2) the generally low production yields on new or recently replanted acreage.

Thus, the committee recommended the bona fide effort criteria be expanded to include both: (1) The present operational provision that the base quantity of a grower who has not produced and sold cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth such season due to lack of use; and (2) a new requirement operational in 1987, that the base quantity of a grower who has not maintained an average production and sales level for the best four of the most recent six years, commencing with the 1981–82 season, equal to at least 50 percent of the grower's base quantity, may be reduced to an amount equal to the average

production and sales for the best four of the most recent six years.

The proposed rule contained the above committee recommendations. However, it is now clear that the new requirement with respect to the most recent six years of production should not be made operational until 1988, in order to provide growers an adequate opportunity to make necessary adjustments in their cultural practices or other operational changes. Thus, it is appropriate that the bona fide effort requirement be based on the best four of the most recent six years, commencing with the 1982–83 season and no action would be taken to reduce base quantities until after the 1987–88 crop year. The 1987–88 crop year begins on September 1, 1987.

In order to provide growers with advance notice of the possibility of an impending reduction in their base quantities, the proposed rule also provided that the committee shall notify growers by registered mail when a grower's production and sales records show, for the best three out of the most recent five years, that the grower's production is 40 percent or more below the established base quantity. The proposed rule stated that the first such notification would occur shortly after the production and sales figures for the 1985–86 season, as reported by growers and handlers, are known, and each year thereafter. However, as previously discussed it is necessary to delay implementation of the bona fide effort rule regarding the removal of allotment base one year later than proposed. Thus, the committee will make the first notification utilizing 1986–87 crop production and sales figures as reported by growers and handlers. This notification should provide growers with ample opportunity to adjust their cultural practices, or to transfer base quantities to other growers who have more production and sales than base quantities.

A comment was received from a Middleboro, Massachusetts, grower who favored the proposed changes, but was concerned that growers with less than six years experience would be unfairly affected. However, the bona fide effort rule applies only to growers with at least six years of production and sales experience.

The final rule provides that the committee review production and sales records annually to determine if such a bona fide review effort is being made to produce and sell cranberries from growers' established acreages. The committee would take due consideration of any available information which might indicate that specified factors beyond growers' control may have had an effect on growers' abilities to make bona fide efforts.

A Long Beach, Washington, grower submitted a comment which discussed the grower's own production experience with cranberry acreage which had not been harvested in the eight years previous to his ownership. He concluded that, despite his best efforts in the following five years, his base would be reduced unfairly under the terms of the proposal. Thus, he proposed that the proposed rule be modified so that the committee could consider the low production yields on new or recently replanted and rejuvenated acreage as a migitating factor beyond a grower's control in making a bona fide effort. Consideration of renovated acreage (the term more widely used than "rejuvenated" to describe the production and cultural practices associated with acreage which has not been recently maintained and harvested) is appropriate because some growers employing good commercial practices may experience low yields on such acreage. Such low yields may be considered outside of a grower's control. Therefore, the final rule has been modified herein to provide for committee consideration of such renovated acreage.

The rule also reaffirms and incorporates an existing requirement that growers should be responsible for furnishing the committee with the necessary records and any other pertinent information in order for the committee to perform its determination.

The rules and regulations currently in effect under the order provide review procedures that any grower could follow if that grower was dissatisfied with the committee's determination. In summary, § 929.125 provides that such grower may submit to the committee, within 30 days after notification of any committee action with respect to a grower's base quantity, a request for a review by the committee of that determination, along with any materials which the grower feels are pertinent. The committee would review its determination, taking into account all materials submitted by the grower, and any other appropriate information. Thereupon, the committee must make a redetermination, and notify the grower of its conclusions, accompanied by the reasons for its decision. If the grower is not satisfied with the subsequent decision of the committee, the grower may appeal, through the committee, to the Secretary, within 30 days. The Secretary shall promptly review the decision of the committee and make a decision which shall be final.

After consideration of all relevant matter presented, including the comments received, and other available information, it is found that the amendment of § 929.153, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because a final rule should be issued before the February 25 committee meeting, in order for growers to have an established base allotment in the event volume regulation is recommended for the 1987–88 marketing season. Also, this rule needs to be effective before that meeting in order for the committee to evaluate the need for additional base in the 1987–88 marketing year.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, New York.

PART 929—[AMENDED]

1. The authority citation for 7 CFR Part 929 continues to read as follows:

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

2. Section 929.153 is amended by revising paragraphs (a) and (d) to read as follows:

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1986–87 crop year, the reserve base quantity shall be 7.24 percent.

* * * * *

(d) *Invalidation of base quantity.* As a condition for the continuing validity of a grower's base quantity, the grower shall make a bona fide effort to produce and sell cranberries on the grower's established acreage. In determining whether a grower has made a bona fide

effort, the committee shall apply the following criteria and procedures:

(1) The committee shall review production and sales records of growers annually to determine if a bona fide effort is being made to produce and sell cranberries. Growers are responsible for furnishing the committee with the necessary records and any other pertinent information in order for the committee to perform its duties under this paragraph.

(2) The base quantity of a grower who has not produced and sold cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth season due to lack of use. In addition, commencing with the 1982–83 season, the base quantity of a grower who has not maintained an average production and sales level for the best four of the most recent six years equal to at least 50 percent of the grower's established base quantity, may be reduced to an amount equal to the average production and sales for the best four of the most recent six years. Due consideration shall be given to any available information which indicates that production and sales were adversely affected by the following factors which are beyond a grower's control: (i) Fluctuations in quantity and quality as affected by weather, disease, and other natural phenomena; and (ii) the generally low production yields on new, or recently replanted or renovated, acreage.

(3) Any grower who is dissatisfied with a committee determination may appeal such determination pursuant to § 929.125. In its reconsideration, the committee shall consider the grower's production and sales data and shall take due consideration of any information submitted regarding the above specified factors beyond a grower's control, which may have an effect on a grower's ability to produce and sell cranberries.

(4) After the production and sales for the 1986–87 season are known, and each year thereafter, the committee shall notify a grower by registered mail when the grower's production and sales records show for the best three out of the most recent five years that the grower's production is 40 percent or more below such grower's established base quantity.

* * * * *

Dated: February 20, 1987.

William J. Doyle

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–3955 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 945

[Amdt. No. 1]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, OR; Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule permits handlers to ship up to 200 hundredweight per day of yellow fleshed Finnish-type potatoes exempt from grade, size, maturity, pack, inspection, and assessment requirements, permits the shipment of prepeeled potatoes exempt from quality requirements, and permits potatoes for prepeeling to be handled without a Certificate of Privilege. Yellow fleshed Finnish-type potatoes often fail marketing order requirements although there is a small specialized market for them. There is a limited market for prepeeled potatoes and such potatoes will not enter normal fresh market channels.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

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

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

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

This action relieves restrictions on handlers regulated under the marketing agreement and order program and will not increase handler costs.

Marketing Order No. 945 regulates the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Idaho-Eastern Oregon Potato Committee, established under the order, is responsible for its local administration.

Notice was given in the May 22, 1986, **Federal Register** (51 FR 18796) affording interested persons until June 23, 1986, to file written comments. None were filed.

At its meeting on January 15, 1986, the committee recommended that yellow fleshed Finnish-type potatoes be exempt from the grade, size, maturity, pack, and inspection requirements of the handling regulation, and from assessment requirements. These potatoes are generally small and often misshapen, and frequently do not meet the quality requirements of the order. However, there is a small but specialized market for this product which is often marketed as "organically grown." The committee believes that by permitting handlers to ship up to 200 hundredweight per day of these potatoes a small part of the consuming public could be served and a few growers and handlers could benefit, all with no adverse impact on the marketing of potatoes. There are few growers and even fewer handlers presently involved with this type of potato. If, however, the shipments of this type of potato reached a significant level, the committee would review the situation and would make any necessary changes at that time.

The committee also recommended that handlers be permitted to ship prepeeled potatoes exempt from quality and pack requirements. According to committee sources, there is only one active prepeeler in the area. The market for prepeeled potatoes is limited, with most going to local restaurants throughout the production area and nearby locations. Hence, the exemption is not expected to adversely affect fresh market shipments.

The committee also recommended removing the requirement that potatoes for prepeeling move under a Certificate of Privilege. Since such potatoes must be inspected and certified as meeting minimum grade and size requirements specified by the handling regulation, the committee believes that the Certificate of Privilege is unnecessary. Eliminating the requirement for a Certificate of Privilege in this instance will simplify the regulation and lessen the paperwork burden on handlers without compromising the quality control efforts of the industry.

It is hereby found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

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

2. Section 945.341 is hereby amended by revising (e)(1) to include "prepeeled potatoes," (f) to exclude potatoes for prepeeling, and revising (g) to include yellow-fleshed Finnish potatoes as follows:

§ 945.341 Handling regulation.

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of prepeeled potatoes as defined in paragraph (h) of this section or potatoes for any of the following purposes:

* * * * *

(f) *Safeguards.* (1) Each handler making shipments of potatoes for charity, experimentation, or export pursuant to paragraph (e) of this section shall:

* * * * *

(g) *Minimum quantity exemption.* Each handler may ship up to but not to exceed, five hundredweight of potatoes, except yellow fleshed Finnish-type potatoes, any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment that exceeds five hundredweight of potatoes. Handlers of potatoes commonly known as yellow fleshed Finnish potatoes may handle up to 200 hundredweight of such potatoes any day without regard to the inspection and assessment requirements of this part.

* * * * *

Dated: February 12, 1987.

Thomas R. Clark,

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

[FR Doc. 87–3707 Filed 2–24–87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–09–AD; Amdt. 39–5566]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric CF6–80 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6–80 series engines, which requires inspection of the underside of the engine strut systems raceway and filling of certain unsealed openings. This action is prompted by an inspection of production airplanes that revealed two unsealed triangular openings on the underside of the raceway. If leaking flammable fluids should enter the raceway, this condition, if not corrected, could allow the fluids to drain out onto the engine core, rather than overboard through the normal drainage system, and could result in an engine compartment fire.

EFFECTIVE DATE: March 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Steven P. Clark, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office; telephone (206) 431–1963. Mailing address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: An inspection of the systems raceway on the engine struts of two Boeing Model 767 airplanes in production, equipped with General Electric CF6–80 series engines, revealed two unsealed triangular openings on the underside of the raceway approximately one-quarter-inch wide and two inches long. The systems raceway routes the airplane hydraulic and electrical lines into the engine compartment and isolate leaking flammable fluids in the area from the engine core. The main fuel supply line passes through the systems raceway compartment and exits on the opposite side of the strut. If leaking flammable fluids should enter the raceway, these openings could allow the fluids to drain out onto the engine core instead of overboard through the normal drainage system. The condition could result in an engine compartment fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–54A0024, dated December 23, 1986, which describes the inspection of the raceway area and the sealing of any unfilled openings.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires inspection of the raceway and repair, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, and evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, equipped with General Electric CF6–80 series engines, listed in Boeing Alert Service Bulletin 767–54A0024 dated December 23, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude flammable fluid leaking into the engine strut systems raceway from draining onto the engine core, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect the underside of the engine strut system raceway and fill any unsealed openings identified in accordance with Boeing Alert Service Bulletin 767–54A0024 dated December 23, 1986, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 13, 1987.

Issued in Seattle, Washington, on February 17, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3788 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–02–AD; Amdt. 39–5567]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, which currently requires inspection of trailing edge flap tracks for cracking. This amendment incorporates a change in the required inspection procedure from visual to ultrasonic for the area adjacent to the first four fastener holes from the forward end on flap track numbers 1, 2, 7, and 8. This action is prompted by a recent flap track failure which occurred shortly after the track was inspected visually in accordance with the existing AD. Cracking could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

EFFECTIVE DATE: March 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commerical Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 84–19–02, Amendment 30–4917 (49 FR 36819), as amended by Amendments 39–5314 (51 FR 18308) and 39–5466 (51 FR 40969), requires visual inspections for cracking of the first four fastener holes of the trailing edge flap track at intervals of 300 landings, visual inspections for cracking of the other fastener holes common to the fail-safe bar at intervals of 1,000 landings, and subsequent repair, if necessary. There have been new reports of cracking of the forward end of the flap track. Recently, a Number 1 flap track failed at the first fastener hole at 124 landings since the last visual inspection. This indicates that the visual inspection is not adequate to detect a crack before it becomes critical.

The FAA has reviewed and approved Revision 3 to Boeing Alert Service Bulletin 747–57A2229, dated December 18, 1986, which described a procedure for ultrasonic inspection of the area adjacent to the first four fastener holes from the forward end of flap track numbers 1, 2, 7, and 8, and repair, as necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, this action amends the existing airworthiness directive to require ultrasonic inspection for cracking of the trailing edge flap tracks and repair, if necessary, in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 3, dated December 18, 1986.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that noice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By amending AD 84–19–02, Amendment 39–4917 (49 FR 36819; September 20, 1984), as amended by Amendments 39–5314 (51 FR 18308; May 19, 1986) and 39–5466 (51 FR 40969; November 12, 1986), by revising paragraph A. to read as follows:

"A. 1. Within 100 landings after the effective date of this amendment, unless accomplished within the last 200 landings, and at intervals thereafter not to exceed 300 landings, ultrasonically inspect the Number 1 and 8 flap tracks lower flanges directly below their vertical web at the front end for cracks

adjacent to bolts number 1 through 4 in accordance with the procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 3, dated December 18, 1986, or later FAA-approved revisions.

2. Within 150 landings after the effective date of this amendment, unless accomplished within the last 150 landings, and at intervals thereafter not to exceed 300 landings, ultrasonically inspect the number 2 and 7 flap tracks lower flanges directly below their vertical web at the front end for cracks adjacent to bolts number 1 through 4 in accordance with the procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 3, dated December 18, 1986, or later FAA-approved revisions.

3. Within 300 landings after the effective date of this amendment, or within 300 landings from the last visual inspection, whichever occurs first, and at intervals thereafter not to exceed 300 landings, visually inspect number 3, 4, 5, and 6 flap tracks lower flanges and vertical webs at the front end for cracks adjacent to bolts number 1 through 4 in accordance with the procedures described in Boeing Service Bulletin 747–57A2229, Revision 2, dated June 6, 1986, or later FAA-approved revisions.

4. Replace cracked flap tracks prior to further flight in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986, or later FAA-approved revisions."

This amends Amendment 39–4917, as amended by Amendments 39–5314 and 39–5466.

This amendment becomes effective March 13, 1987.

Issued in Seattle, Washington, on February 17, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3789 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376 and 399

[Docket No. 60853–6153]

Technical Adjustments to Human Rights Controls

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which includes all commodities subject to Department of Commerce export controls, including foreign policy controls for reason of human rights/crime control.

This rule is issued with the concurrence of the Department of State and amends the Export Administration Regulations to reflect recent technological advances and to clarify that computerized fingerprint equipment, laser-driven fingerprint equipment and plastic handcuffs are subject to foreign policy controls for human rights/crime control purposes.

EFFECTIVE DATE: This rule is effective February 25, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to John Black, Export Administration, Room 1622, Department of Commerce, Washington, DC 20230, Telephone (202) 377–3856.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

List of Subjects in 15 CFR Parts 376 and 399

Exports; Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citation for 15 CFR Part 376 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 376.14 [Amended]

2. Section 376.14(a) is amended by inserting "1522 (laser-driven fingerprint equipment only)," and "1565A (computerized fingerprint equipment only)," between "1516A," and "4597B".

3. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising the *Reason for Control* paragraph and adding a *Special Foreign Policy Controls* paragraph immediately following the *Special Licenses Available* paragraph, reading as follows:

1522A Lasers and Laser Systems Including Equipment Containing Them.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy controls apply only to laser-driven fingerprint equipment.

Special Licenses Available * * *

Special Foreign Policy Controls: Foreign policy controls apply to exports of laser-driven fingerprint equipment controlled by ECCN 1522A to all foreign destinations except Australia, Japan, New Zealand, and members of NATO.

* * * * *

5. In Supplement No. 1 to § 339.1 (the

Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by adding a *Special Foreign Policy Controls* paragraph immediately preceding the *Special South Africa and Namibia Controls* paragraph, reading as follows:

1565A Electronic computers * * *

* * * * *

Special Foreign Policy Controls: Foreign Policy Controls apply to exports of computerized fingerprint equipment controlled by ECCN 1565A to all foreign destinations except Australia, Japan, New Zealand, and members of NATO.

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 5597B is amended by revising the heading to read as follows:

5597B Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; and specially designed parts and accessories, n.e.s.

* * * * *

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 9 (Miscellaneous), ECCN 5999B is amended by revising the heading to read as follows:

5999B Saps; specially designed implements of torture; straight jackets; plastic handcuffs; police helmets and shields; and parts and accessories, n.e.s.

* * * * *

Dated: February 19, 1987

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–3895 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 270, 271 and 284

[Docket Nos. RM86–3–069 through 017]

Ceiling Prices; Old Gas Pricing Structure; Order Granting Rehearing

Issued: February 13, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On December 15, 1986, the Federal Energy Regulatory Commission issued Order No. 451–A granting rehearing in part, denying rehearing in part, and clarifying the final rule adopted in Order No. 451. Order 451 modified the price structure of old natural gas pursuant to Commission authority under the Natural Gas Policy Act of 1978, and adopted regulations governing implementation of the revised price structure. On January 14, 1987, three applicants filed for rehearing of Order No. 451–A. In this order, the Commission grants rehearing of its decision solely for the purposes of further consideration.

EFFECTIVE DATE: February 13, 1987

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8308.

Ceiling Prices: Old Gas Pricing Structure; Order Granting Rehearing for Purposes of Further Consideration

Issued February 13, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon Charles a. Trabandt and C.M. Naeve.

On December 15, 1986, the Federal Energy Regulatory Commission issued Order No. 451–A [1] amending the final rule adopted in Order No. 451.[2] On January 14, 1987, Independent Petroleum Association of America, General Service Customer Group, and Meridian Oil filed timely applications for rehearing of Order No. 451–A.

To have sufficient time to consider the issues raised in these applications, the Commission grants rehearing of Order No. 451–A solely for the purpose of further consideration. This action does not constitute a grant or denial of any application on its merits, either in whole or in part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR Part 713), no answers to these applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3751 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[1] 51 FR 46762 (December 24, 1986).
[2] 51 FR 22168 (June 18, 1986).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 220, and 226

[Docket No. R–87–1304; FR–1801]

Mutual Mortgage Insurance and Rehabilitation Loans; Mortgage Insurance Qualification Requirements for Veterans

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule conforms 24 CFR 203.18 and other HUD rules governing single family qualification requirements for veterans with 1981 and 1982 amendments to 38 U.S.C. 3103A—amendments modifying time-in-service requirements necessary for more recent military veterans to qualify for various service-related benefits.

EFFECTIVE DATE: March 26, 1987.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The statutory maximum loan-to-value ratio required to be met by a veteran of military service to qualify for a HUD-insured single family mortgage is more favorable than the loan-to-value ratio for non-veterans. This permits veterans to qualify for lower downpayments on HUD-insured homes. At present, §§ 203.18(b)(1), 220.30(b)(1), and 226.5(b)(1) require that, before a veteran may qualify for the more favorable downpayment treatment, a Certificate of Eligibility from the Veterans Administration must be submitted to HUD.

This rule conforms 24 CFR 203.18(b)(1), 220.30(b)(1) and 226.5(b)(1) with 1981 and 1982 amendments to 38 U.S.C. 3103A which altered the time-in-service requirements necessary for persons who have served in the armed services to qualify for HUD mortgage insurance (and other Federal benefits) arising out of their status as veterans.

Although this rule will have the effect of increasing the durational requirements necessary for more recent veterans to claim that status, the change in HUD rules implements an explicit

statutory requirement, and for that reason, the Department believes that it is unnecessary to solicit public comment before publication of this rule for effect.

HUD's revised mortgage insurance certification requirements for veterans constitutes an internal administrative procedure that 24 CFR 50.20 excludes from the requirements of 24 CFR Part 50—the HUD rules implementing section 102(2)(c) of the National Environmental Policy Act 1969, 42 U.S.C. 4332.

This rule is not a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because the central purpose of this rule is to conform 24 CFR 203.18 and other HUD rules governing single family qualification requirements for veterans with the 1982 Veterans Act.

This rule was listed as item number 820 in the Department's Semiannual Agenda of Regulations published on October 29, 1986 (51 FR 44166 and 44180) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: Housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs: Housing and community development, Projects.

24 CFR Part 226

Government employees, Mortgage insurance, Single family housing.

Accordingly, the Department amends 24 CFR Parts 203, 220 and 226 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 continues to read as follows:

Authority: Secs. 203, 204, and 211, National Housing Act (12 U.S.C. 1709, 1710, 1715b); (sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); in addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.18 is amended by revising (b)(1) and (b)(2) and by adding (b)(3) to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(b) * * *

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days; or

(2) A Certificate of Eligibility from the Veterans Administration establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Veterans Administration establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had not previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months of continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(*2*) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Veterans Administration has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) Was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification).

* * * * *

PART 220—MAXIMUM MORTGAGE AMOUNT—DOLLAR LIMITATION

3. The authority citation for 24 CFR Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 220.30 is amended by revising (b)(1) and (b)(2) and by adding (b)(3) to read as follows:

§ 220.30 Maximum mortgage amounts—loan-to-value limitation.

* * * * *

(b) * * *

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days; or

(2) A Certificate or Eligibility from the Veterans Administration establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Veterans Administration establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months or continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(2) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Veterans Administration has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) Was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification).

* * * * *

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES

5. The authority citation for 24 CFR Part 226 continues to read as follows:

Authority: Secs. 211, 807, 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 226.5 is amended by revising (b)(1) and (b)(2) and by adding (b)(3) to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

* * * * *

(b) * * *

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days, or

(2) A Certificate of Eligibility from the Veterans Administration establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Veterans Administration establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had not previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either

(1) Twenty-four months of continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(2) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Veterans Administration has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) That the person was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification).

Dated: February 13, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–3855 Filed 2–24–87; 8:45 am]

BILLING CODE 4210–27–N

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[SECNAV Instruction 5211.5C]

Availability of Department of the Navy Records and Publications of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule amendment.

SUMMARY: The Department of the Navy establishes a new specific exemption rule from certain provisions of the Privacy Act of 1974 for a system of records.

EFFECTIVE DATE: September 28, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations, (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000, telephone: 202/697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: On August 26, 1986, at 51 FR 30377 of the **Federal Register**, the Department of the Navy proposed to amend final rule 32 CFR Part 701 by adding a new exemption rule for a system of records. No comments were received on the proposal and the new exemption rule for the record system under the Privacy Act of 1974 (5 U.S.C. 552a) is adopted as set forth below for Subpart G.

List of Subjects in 32 CFR Part 701

Privacy, Exemption, Investigative information records.

PART 701—[AMENDED]

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

Authority: 5 U.S.C. 552a, as amended by Pub. L. 93–502, 32 CFR Part 286 (40 FR 8190).

Subpart G—Privacy Act Exemptions

2. Section 701.117 is amended by adding a new paragraph (o).

§ 701.117 Exemptions for specific Navy records systems.

* * * * *

(o) *Naval Sea Systems Command.*

(1) *ID–N04385–2.*

System name: Hotline Program Case File.

Exemption: Portions of this system of records are exempt from the following subsections of Title 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

Authority: 5 U.S.C. 552a (k) (1), (2), (5), (6) and (7).

Reason: Exempted portions of this system consist of information compiled for the purpose of investigations, including reports of informants and investigators. Such investigations may be associated with identifiable individuals. Disclosure of files in this system would interfere with orderly investigations, and possibly result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well-being of informants, witneses and their families. Such disclosures could also reveal the render ineffectual investigatory techniques and methods and sources of information and could further result in the invasion of the personal privacy of individuals only incidentally related to an investigation. Depending on the nature of the complaint, records may contain information that: Is currently and properly classified pursuant to executive order or foreign policy, is confidentially provided information located in investigatory records compiled for the purposes of enforcement of non-criminal law, relates to qualifications, eligibility, or suitability for Federal employment, is test or examination material used to determine qualifications for appointment or promotion in the Federal service, is confidentially provided

information used to determine potential for promotion in the armed services.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1987.

[FR Doc. 87–3857 Filed 2–24–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 86–33]

Drawbridge Operation Regulations; Cold Spring Brook, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Summerwood Condominium Association, the Coast Guard is adding regulations governing the footbridge over Cold Spring Brook, at mile 0.1, Old Saybrook, Connecticut, by requiring advance notice when the span is in place during the summer. This change is being made because of the limited number of requests for opening the draw. This action would relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on April 13, 1987.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: On September 26, 1986, the Coast Guard published proposed rules (51 FR 34233) concerning this amendment. The Commander, Third Coast Guard District, also published the proposal as a Public Notice dated September 29, 1986. In each notice, interested persons were given until November 10, 1986, to submit comments.

Drafting Information

The drafters of these regulations are Ciro Compagno, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments

No comments were received on the notice of proposed rules published in the **Federal Register** and only two comments offering no objections were received to Public Notice 3–636.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. There are no commerical water-dependent facilities or entities that will be adversely affected by this action.

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.202 is added to read as follows:

§ 117.202 Cold Spring Brook.

The draw of the footbridge, mile 0.1 at Saybrook, shall open within 15 minutes of a mariner's request by telephone. To enable mariners to request bridge openings, the owner shall maintain and monitor a telephone at the bridge and provide a means for mariners to secure their boats upstream and downstream of the bridge in order to use this telephone.

Dated: February 3, 1987.

G.D. Passmore,

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

[FR Doc. 87–3814 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–26

[FPMR Temp. Reg. E–82, Supp. 1]

Requests for Waivers

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation E–82 to January 31, 1988.

DATES: *Effective date:* February 1, 1987. *Expiration date:* January 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Renner, Regulations and Policy Division (703–557–1256).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR 101–26

Government property management.

(Sec. 205(c) 63 Stat. 390; (40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

T.C. Golden,

Administrator of General Services.

Federal Property Management Regulations Temporary Regulation E–82—Supplement 1

February 2, 1987.

To: Heads of Federal agencies.

Subject: Requests for waivers.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation E–82.

2. *Effective date.* This regulation is effective February 1, 1987.

3. *Expiration date.* This supplement expires on January 31, 1988.

4. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary Regulation E–82 is revised to January 31, 1988.

[FR Doc. 87–3808 Filed 2–24–87; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–40

[FPMR Temp. Reg. A–23, Supp. 3]

Use of Carrier Contractors for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A–23 by incorporating the provisions of the new express small package contract effective October 1, 1986. Accordingly, this supplement (a) Extends the regulation to include the Department of Defense as a voluntary user of the contractor's services; (b) expands the service areas to include Puerto Rico; (c) reflects organizational changes within the General Services Administration (GSA); (d) incorporates the use of the U.S. Postal Service's nationwide five-digit ZIP codes in identifying geographical areas; (e) excludes from contract coverage local pickup and delivery between locations within the metropolitan area of any city, town, or community; (f) authorizes use of automated electronic billing and payment procedures; (g) introduces the use of contractor "lock boxes" to facilitate pickup service; (h) prescribes requirements for agencies using purchase orders or blanket purchase agreements to acquire services; and (i) revises attachment A to identify the new shipment charges effective October 1, 1986, and the locations of the contractor's offices.

DATES: *Effective date:* October 1, 1986. *Expiration date:* September 30, 1987, unless otherwise canceled or extended.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Director, Travel and Transportation Management Division (FBT), Washington, DC 20406, telephone FTS 557–1261 or commercial 703–557–1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property, Moving of household goods, Office relocations, Transportation.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A–23—Supplement 3

January 20, 1987.

To: Heads of Federal agencies.

Subject: Use of carrier contractors for express small package transportation.

1. *Purpose.* This supplement amends FPMR Temp. Reg. A–23 by incorporating provisions of the new express small package contract effective October 1, 1986. In addition, this supplement cancels supplements 1 and 2 and consolidates all changes to the original regulation. Paragraphs 10 and 13 remain unchanged and are found in the original regulation.

2. *Effective date.* October 1, 1986.

3. *Expiration date.* September 30, 1987, unless otherwise canceled or extended.

4. *Explanation of changes.* a. Paragraph 4 is revised to reflect organizational changes in the General Services Administration (GSA) and the expansion of contract services to include Puerto Rico, and reads as follows:

4. *Background.* Under section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, the General Services Administration (GSA) is responsible for prescribing policies and procedures that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic management. Accordingly, GSA has entered into a contract with the carrier listed in attachment A for the transportation of express small packages from and to specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, where the contractor or its agent presently provides or will provide next day service. In consideration of the contract rates listed in Attachment A and to the extent provided in this regulation, the Government has agreed to place all its transportation requirements for express small package service with the contractor.

b. Paragraph 5 is revised by adding reference to the Department of Defense as a voluntary user of the contractor's services, and reads as follows:

5. *Scope.* This regulation is mandatory for all civilian executive agencies pursuant to section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, and also may be used by (1) cost-reimbursable contractors working for the Government, (2) the legislative and judicial branches of the U.S. Government, and (3) the Department of Defense.

c. Paragraph 6 is revised to define "agency" and to redefine "geographical areas" through the use of the U.S. Postal Service national five-digit ZIP codes, and reads as follows:

6. *Definitions.* a. "Agency" means any ordering activity (including cost-reimbursable contractors) authorized to obtain contractor services at the contract rate.

b. "Commercial form" means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading (see 41 CFR 101–41.302–3).

c. "Commercial forms and procedures" means a provision whereby shipments are made using commercial forms and commercial billing procedures instead of Government bills of lading (SF 1103) and their related billing procedures. (See 41 CFR 101–41.304–2.)

d. "Contractor" means the contract awardee listed in attachment A.

e. "Contract rate" means a shipment charge listed in attachment A.

f. "Express small package" means a package weighing 50 pounds or less, measuring a maximum of 108 inches in length and girth combined, and containing general commodities except:

(1) Hazardous materials as defined in 49 CFR 172.101;

(2) Property of extraordinary value;

(3) Live animals or plants;

(4) Precious metals or stones;

(5) Weapons or firearms;

(6) Liquor or tobacco products;

(7) Currency, including money orders;

(8) Narcotics or other controlled substances, unless otherwise accepted by the contractor;

(9) Any other article which the contractor prohibits its commercial customers from shipping; and

(10) Letters, unless adhering to the criteria established by the U.S. Postal Service as specified in par. 7a, below.

g. "Geographical areas" means locations lying wholly or partially within cities, towns, and communities identified by the U.S. Postal Service national five-digit ZIP code in the contractor's service guide or analogous listing.

h. "Holiday" means a Federal holiday.

i. "Special service" means any other agency-required services, such as weekend delivery, escorted courier service, insurance, proof of delivery.

additional airbill copies, etc., which, if requested, will be subject to fees not higher than those charged to the contractor's regular commercial customers.

j. "Standard service" means pickup and next day delivery (including desk pickup and desk delivery) between the hours of 8 a.m. and 5 p.m., Mondays through Fridays, except holidays.

d. Paragraph 7 is revised to exclude local pickup and delivery service between locations within the metropolitan area of any city, town, or community, and reads as follows:

7. *Applicability.* a. The scope of the express small package contract does not include "letters"; i.e., routine first class mail, as defined in U.S. Postal Service Regulations, 39 CFR 310.1 (Private Express Statutes) unless the letters are so "extremely urgent" that the value or usefulness of the letters would be lost or greatly diminished if not delivered within the time limits noted in par. (2), below. "Letter" is generally defined as "a message directed to a specific person or address and recorded in or on a tangible object." (See 39 CFR 310.1 for specific exclusions from the definition.)

(1) It is conclusively presumed that a letter is "extremely urgent" if the amount paid for carriage under the contract is at least $3 or twice the applicable U.S. postage for first class mail (including priority mail), whichever is greater. If a single shipment consists of a number of letters that are picked up together at a single origin for shipment to a single destination, postage may be computed as though the shipment constitutes a single letter. For other types of charges, a bona fide estimate of the average number of letters or shipments may be divided into the charge.

(2) If the value or usefulness of a letter would be lost or greatly diminished if the letter were not delivered under the following conditions, then the letter is considered "extremely urgent" and may be shipped by the contractor under the express small package contract:

(a) Where the letter is dispatched within 50 miles of the intended destination, delivery must be completed within 6 hours or by the close of the addressee's normal business hours on the date of dispatch, whichever is later, except that letters dispatched after noon and before midnight must be delivered by 10 a.m. of the addressee's next business day;

(b) For all other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day;

(c) Agencies shall ensure that all outside covers or containers of letters are prominently marked with the words "Extremely Urgent—Private Carriage Authorized." In addition, each outside cover shall show the names and addresses of the contractor, the sender, and the addressee;

(d) The determination that a letter or letters meet the extreme urgency provisions of 39 CFR 320.6 shall be made by the responsible sending office. If such letters are sent to an agency mailroom for pickup by a private carrier rather than pickup at the sending office, the sending office shall ensure that such letters are marked clearly with the legend "Extremely Urgent—Private Carriage Authorized"; or

(e) Any letters, the extreme urgency of which meets the requirements of 39 CFR 320.6, sent by a private express carrier shall be placed in plain envelopes.

(3) In addition to the exception for extremely urgent letters, data processing materials may be shipped as an express small package if the data processing materials are conveyed (a) to a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (b) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center.

(4) For further guidance with respect to shipments of letters, including data processing materials, see U.S. Postal Service Regulations at 39 CFR Parts 310 and 320, or call the Law Department of the U.S. Postal Service at FTS 245–4616.

b. The provisions of this regulation apply only when agencies subject to this regulation are using commercial forms and procedures. These agencies shall ship their express small packages by the contractor specified in attachment A, except that the Government reserves the right to use the U.S. Postal Service when in the Government's best interest.

c. To the extent cost-reimbursable contractors are authorized by an agency to ship under this regulation and are reimbursed the transportation costs as direct allowable costs, the contract rates and services provided in this regulation apply to cost-reimbursable contractors. Agencies shall instruct their cost-reimbursable contractors. Agencies shall instruct their cost-reimbursable contractors that, before a shipment is made under this regulation, the commercial shipping document must be annotated with either of the following notations, as appropriate:

(1) *When the Government is shown as the consignee*—"Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor are assignable to, and shall be reimbursed by, the Government"; or

(2) *When the Government is not shown as either the consignor or consignee*—"Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract number ————————. This may be confirmed by contacting (name and address of the contract administration office listed in the contract)."

d. If the contractor offers and publishes for use by the general public a charge that is lower than the contract rate for the same service, agencies shall pay the lower charge.

e. The contract rate does not apply for local pickup and delivery between locations in the metropolitan area of any city, town, or community.

e. Paragraph 8 is revised to identify the contractor's relationship with agencies acquiring service by purchase order or blanket purchase agreement, and reads as follows:

8. *Contractor responsibilities.* a. In consideration of payment for services provided at the contract rates, the contractor will furnish:

(1) Standard service (see subpar. 6j);

(2) Delivery service for "extremely urgent" letters (see par. 7);

(3) Pickup service on the same day pickup is requested (see subpar. 11a); and

(4) Delivery service on the next day (excluding Saturdays, Sundays, and holidays) following receipt from the shipper. Next day delivery service will not apply when delivery is delayed due to acts of God, the public enemy, the authority of law, or the acts of the consignor (shipper) or consignee (receiver).

b. Packages not delivered on the next day as prescribed in subpar. 8a(4) shall be transported free of charge.

c. When an agency uses purchase orders (POs) or blanket purchase agreements (BPAs), as authorized at 48 CFR Subpart 13.2, and these contain a dollar value limitation, the contractor will monitor the BPAs/POs and promptly notify the issuing agency when the contractor's service charges approach the dollar value ceilings noted on the BPAs/POs. The contractor will monitor the BPAs/POs to determine if such instruments restrict the ordering of contractor service to only certain

authorized personnel of an agency. If there are restrictions, the contractor will communicate with the issuer of the BPAs/POs to clarify the intent and purpose of the restriction or to remove the restriction, as agreed to by the Government agency involved. The contractor's financial system should have the flexibility to separately account for contractual and noncontractual services which may have been authorized by separate BPAs/POs, and also "break out" the charges for such services on subsequent invoices.

f. Paragraph 9a is redesignated as paragraph 9–1 and is revised to cover use of automated electronic billing and payment systems, and reads as follows:

9–1. *Payment responsibilities.* In accordance with the terms of the contract, payments to the contractor will be due on the 30th calendar day after the date of actual receipt of a proper invoice. The contractor is authorized to suspend service to an account to the extent that undisputed amounts are overdue more than 90 calendar days from the invoice date in accordance with par. 9–2. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made. The Prompt Payment Act (Pub. L. 97–177, 31 U.S.C. 3902, May 21, 1982) provides for the assessment of interest penalties when payments are overdue. A claim for reimbursement of paid transportation charges shall be filed against the contractor when it is determined that the contractor failed to furnish next day delivery service as provided in subpars. 8a(4) and 8b.

a. GSA has determined that the contractor's invoice form meets the requirements of 41 CFR 101–41.304–2(d)(2) regarding payment of charges and is a proper invoice for payment and for the purposes of implementing the Prompt Payment Act. Accordingly, agencies should establish simplified procedures to ensure prompt payment to the contractor. If agencies do not have an effective payment system to achieve this purpose, they should consider requiring the shipper and/or consignee to forward a copy of the contractor's airbill to the appropriate paying office for payment or reconciliation. (Requests for *additional* airbill copies are considered "special services" under subpar. 6(i), however.)

b. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commercial document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date.

c. At the option of the agency, and with the concurrence of the contractor, use of automated electronic billing and payment systems, or other sophisticated methods to simplify the verification and control process, may be separately negotiated and established by agreement between the Government agency and the contractor.

g. Paragraph 9b is redesignated as paragraph 9–2 and is revised to reflect GSA's organizational changes, and read as follows:

9–2. *Suspension of service.* a. Service to any delinquent agency account may be suspended to the extent that undisputed amounts are overdue more than 90 calendar days provided the contractor has simultaneously notified the account holder and the appropriate GSA zone office 60 calendar days after the invoice date that amounts are overdue and need to be paid within 30 calendar days of the date of the delinquency notice. The GSA zone office will also send a letter to the delinquent agency account within 5 calendar days of receipt of the 60 calendar day notice from the contractor.

b. When a question arises concerning the proper amount of charges for services rendered (e.g., improper billing, failure to post payments, erroneous charges, etc.), agencies shall give notice of the apparent error, defect, or impropriety in an invoice to the contractor's billing office, with a copy to the appropriate GSA zone office, within 15 calendar days of receipt of the invoice, pursuant to 31 U.S.C. 3903(5) and OMB Circular A–125, sec. 6b., which implement the Prompt Payment Act.

c. No suspension of service will be initiated where such disputes exist if an activity has paid the balance of undisputed billings. The GSA contracting officer will make the final decisions concerning any disputed charges.

d. Any suspension will be taken only against the activity to which the account number is assigned, not against the entire agency.

e. Service shall be restored within 5 calendar days of payment of the overdue amount(s).

h. Paragraph 11 is revised to include use of contractor's "lock boxes" and to prescribe requirements for agencies establishing account numbers and appropriate acquisition procedures, and reads as follows:

11. *Agency procedures for obtaining service.* a. Pickup service as noted in subpar. 6j may be ordered on an as-needed basis. In these instances, agencies shall allow the contractor a minimum of 2 hours to make the pickup. For repetitive shipments, agencies may arrange with the contractor to install "lock boxes" and/or furnish regular pickup service at specified times on specified days to meet the shipper's requirements. Agencies should arrange such security clearances and passes as may be necessary to enable the contractor to perform pickup services in a timely fashion in accordance with agency procedures.

b. When and where practicable, agencies shall minimize transportation and administrative costs by consolidating into one shipment packages moving at one time from one consignor to one consignee.

c. Agencies shall determine the weight of each shipment and have the weight indicated on the appropriate commercial form. The total weight of a shipment shall be rounded to the nearest whole pound. Shipments weighing less than 1 pound shall be shown as weighing 1 pound.

d. Where the Government requires special services beyond the scope of the contract (such as weekend or holiday pickup and delivery, escorted courier services, insurance, airbill copies, and proof of delivery, international service, service to communities not served next day by the contractor or its agent), an agency will have the option either to purchase these services from the contractor at the same fees charged to its regular commercial customers or use another carrier.

e. Agencies shall provide the contractor with a billing address at the time an agency account is established. To ensure that billings are directed to the proper paying office and subsequent payments are credited, agencies may establish a centralized payment system or clearly identify individual shipping activities/accounts to which billings are to be directed. Some agencies may require more than one account number per ordering activity if they wish to differentiate billing of different type shipments.

f. Agencies using a purchase order (PO), a blanket purchase agreement (BPA) pursuant to 48 CFR Subpart 13.2, or other simplified acquisition procedures, should provide the following information:

(1) Name of contractor;

(2) Account number(s);

(3) GSA contract number GS–00F–88038;

(4) Purchase order number;

(5) "Bill to" address;

(6) Term of the BPA/PO; and

(7) Total dollar value authorized under the BPA/PO.

g. The contractor's Government coordinator may be contacted to establish accounts or resolve service issues. (See Attachment A.)

i. Paragraph 12 is revised to reflect GSA's organizational changes and reads as follows:

12. *Contractor performance.* The performance of contractor responsibilities as specified in par. 8 is essential to meet the objectives for which the express small package contract and these regulations were developed. Agencies should notify the appropriate GSA zone office, Federal Supply Service Bureau, Attn: Traffic and Travel Services Zone Manager, in writing, when the contractor fails to meet its contractual responsibilities. For purposes of this paragraph, the appropriate GSA zone office is that office listed in attachment B having jurisdiction over specified locations from which a shipment originates. These agency reports shall be complied and forwarded for appropriate action to the GSA Travel and Transportation Management Division (FBT), Washington, DC 20406.

j. Paragraph 14 is revised to read as follows:

14. *Comments.* Comments and recommendations concerning use of this program or implementing regulations may be submitted to the General Services Administration, Travel and Transportation Management Division (FBT), Washington, DC 20406.

k. Attachment A is revised to reflect shipment charges effective October 1, 1986, and updated references to the contractor's Government coordinator and office locations.

l. Attachment B is revised to reflect GSA's organizational changes.

T.C. Golden,

Administrator of General Services.

Attachment A

Contractor, Shipment Charges, and Geographical Areas

CONTRACTOR CODE AND NAME: DHL–DHL AIRWAYS, INCORPORATED

Shipment weight (lbs)	Shipment charge
1	$4.94
2	5.88
3	6.82
4	7.76
5	8.70
6	9.64
7	10.58
8	11.52
9	12.46
10	13.40
11	14.34
12	15.28

CONTRACTOR CODE AND NAME: DHL–DHL AIRWAYS, INCORPORATED—Continued

Shipment weight (lbs)	Shipment charge
13	16.22
14	17.16
15	18.10
16	19.04
17	19.98
18	20.92
19	21.86
20	22.80
21	23.74
22	24.68
23	25.62
24	26.56
25	27.50
26	28.44
27	29.38
28	30.32
29	31.26
30	32.20
31	33.14
32	34.08
33	35.02
34	35.96
35	36.90
36	37.84
37	38.78
38	39.72
39	40.66
40	41.60
41	42.54
42	43.48
43	44.42
44	45.36
45	46.30
46	47.24
47	48.18
48	49.12
49	50.06
50	51.00

Geographical Areas Served

The DHL contract rates listed in this attachment apply to any location within the geographical area of cities, towns, and communities in the United States (including Alaska and Hawaii) and Puerto Rico, where DHL or its agent presently, or in the future, provides or will provide next day service to the extent prescribed in par. 8 of this regulation. The geographical area of cities, towns, and communities is the U.S. Postal Service national five-digit ZIP code area listed in DHL's publication, "DHL Express Guide for U.S. Federal Government Shippers," or as may be subsequently identified by DHL as being served next day. Since it is impracticable to print a current area listing in these regulations, agencies may determine up-to-date areas of service and obtain other information by contacting either DHL's Government coordinator at 703–684–0102, the DHL offices listed herein, or the appropriate GSA office listed in attachment B. DHL will furnish its guide to agencies upon request.

DHL Offices

Alabama

Birmingham, (205) 591–6560
Huntsville, (205) 772–3887
Mobile, (800) 231–3391
Montgomery, (205) 265–5666

Alaska

Anchorage, (907) 243–1503
Fairbanks, (907) 456–1707
Homer, (907) 235–5244
Juneau, (907) 789–2187
Kenai, (907) 283–4650
Ketchikan, (907) 225–5777
Kodiak, (907) 486–5354
Prudhoe Bay, (907) 659–2547
Sitka, (907) 747–3063
Valdez, (907) 835–2625

Arizona

Phoenix, (602) 244–9922
Tucson, (602) 294–1887

Arkansas

Little Rock, (501) 562–1666

California

Bakersfield, (805) 392–0183
Burbank, (818) 785–7555
Concord, (800) 345–6011
Fresno, (209) 454–0535
Los Angeles, (213) 973–7300
Ontario, (714) 241–1520
Oxnard, (805) 967–5551
Sacramento, (916) 929–1112
San Diego, (619) 275–3890
San Francisco, (415) 345–9400
San Jose, (408) 345–9400
Santa Ana, (714) 241–1520
Santa Barbara, (805) 967–5551
Santa Maria, (805) 967–5551
Stockton, (800) 632–4774
Van Nuys, (213) 973–7300

Colorado

Colorado Springs, (303) 528–6777
Denver, (303) 388–9212

Connecticut

Hartford, (203) 683–2014

Delaware

(215) 461–8111

District of Columbia

Washington, (703) 684–8733

Florida

Ft. Lauderdale, (305) 791–7400
Ft. Myers, (800) 231–3391
Jacksonville, (904) 739–2327
Melbourne, (305) 851–1432
Miami, (305) 592–8795
Orlando, (305) 851–1432
Pensacola, (800) 231–3391
St. Petersburg, (813) 886–5889
Sarasota, (813) 886–5889
Tallahassee, (800) 231–3391
Tampa, (813) 886–5889
West Palm Beach, (305) 737–2922

Georgia

Atlanta, (404) 997–1635
Savannah (912) 233–5111

Hawaii

Hilo, (808) 836–0441
Honolulu, (808) 836–0441
Kaanapali, (808) 836–0441
Kahului, (808) 836–0441
Kailua/Kona, (808) 836–0441
Lihue, (808) 836–0441

Idaho

Boise, (208) 322–1466
Idaho Falls, (800) 828–3314
Lewiston, (800) 828–3314
Pocatello, (800) 828–3314
Twin Falls, (800) 828–3314

Illinois

Chicago, (312) 456–3200
Decatur, (800) 942–0503
Moline, (800) 942–0503
Peoria, (800) 942–0503
Rockford, (800) 942–0503
Springfield, (800) 942–0503

Indiana

Fort Wayne, (800) 231–3391
Indianapolis, (317) 241–4464
South Bend, (800) 231–3391

Iowa

Cedar Rapids, (800) 942–0503
Des Moines, (515) 282–5418

Kansas

Kansas City, (816) 587–5040
Topeka, (913) 232–5096
Wichita, (316) 263–8300

Kentucky

Lexington, (606) 254–0105
Louisville, (502) 499–7131

Louisiana

Baton Rouge, (800) 231–3391
Lafayette, (800) 231–3391
Lake Charles, (800) 231–3391
New Orleans, (504) 464–0231
Shreveport, (318) 631–9843

Maine

Portland, (800) 225–5345

Maryland

Baltimore, (301) 768–3730

Massachusetts

Boston, (617) 846–8900

Michigan

Battle Creek, (800) 446–6650
Detroit, (313) 388–6810
Flint, (800) 446–6650
Grand Rapids, (800) 446–6650
Jackson, (800) 446–6650
Lansing, (800) 446–6650
Saginaw, (800) 446–6650

Minnesota

Duluth, (800) 272–1825
Minneapolis/St. Paul, (612) 727–1100
Rochester, (800) 272–1825
St. Cloud, (800) 272–1825

Mississippi

Gulfport, (800) 231–3391
Jackson, (800) 231–3391

Missouri

Kansas City, (816) 587–5040
St. Louis, (314) 423–8663
Springfield, (913) 621–0900

Montana

Billings, (800) 826–1063

Nebraska

Lincoln, (402) 474–1111
Omaha, (402) 330–6806

Nevada

Las Vegas, (702) 798–4090
Reno, (702) 358–0545

New Hampshire

Manchester, (800) 225–5345

New Jersey

Newark, (201) 225–8800
Teterboro, (201) 225–8800
Trenton, (201) 382–8820

New Mexico

Albuquerque, (505) 292–7699

New York

Albany, (800) 632–3301
Buffalo, (716) 685–2500/01/03/04
Elmira, (800) 225–5345
Farmingdale, (516) 333–3370
New York City, (718) 917–8000
Rochester, (716) 436–7031
Syracuse, (315) 432–8953
White Plains, (914) 683–1183

North Carolina

Charlotte, (704) 398–2354
Fayetteville, (704) 398–2354
Greensboro, (919) 668–9533
High Point, (919) 668–9533
Raleigh/Durham, (919) 787–9584
Wilmington, (800) 722–8620
Winston-Salem, (919) 668–9533

North Dakota

Bismarck, (612) 727–1100
Fargo, (701) 232–2838
Moorhead, (800) 272–1825

Ohio

Akron, (216) 798–0155
Cincinnati, (606) 331–7777
Cleveland, (216) 671–4700
Columbus, (614) 252–8470
Dayton, (513) 252–3773
Toledo, (419) 866–1560
Youngstown, (216) 671–4700

Oklahoma

Oklahoma City, (405) 682–8088
Tulsa, (918) 622–8311

Oregon

Eugene, (503) 257–3551
Medford, (503) 257–3551
Portland, (503) 257–3551
Redmond, (503) 257–3551

Pennsylvania

Allentown/Bethlehem/Easton, (215) 264–4550
Erie, (412) 262–2764
Philadelphia, (215) 461–8111
Pittsburgh, (412) 262–2764
Scranton, (800) 225–5345
York, (717) 564–7860

Rhode Island

Providence, (401) 739–5900

Puerto Rico

San Juan, (809) 757–5800

South Carolina

Charleston, (803) 767–0275
Columbia, (803) 796–9640
Florence, (803) 767–0275
Greenville/Spartanburg, (803) 234–6651

South Dakota

Sioux Falls, (605) 335–8053 + dial tone + 950–1088

Tennessee

Chattanooga, (404) 820–0821
Johnson City, (800) 231–3391
Knoxville, (615) 970–2232
Memphis, (901) 795–9911
Nashville, (615) 889–4602

Texas

Addison, (214) 471–1999
Amarillo, (800) 833–0151
Austin, (512) 928–3960
Beaumont/Pt. Arthur, (713) 442–4500
College Station, (713) 442–4500
Corpus Christi, (800) 833–0151
Dallas/Ft. Worth, (214) 471–1999
El Paso, (800) 833–0151
Harlingen/McAllen/Brownsville, (800) 833–0151
Houston, (713) 442–4500
Lake Jackson, (713) 442–4500
Laredo, (800) 833–0151
Longview/Tyler, (214) 757–9287
Lubbock, (800) 833–0151
Midland, (800) 833–0151
San Antonio, (512) 491–0430
Sugarland, (713) 442–4500
Texarkana, (800) 833–0151
Town & Country, (800) 833–0151
Victoria, (713) 442–4500

Utah

Ogden, (801) 539–8900
Provo, (801) 539–8900
Salt Lake City, (801) 539–8900

Vermont

Burlington, (800) 225–5345

Virginia

Charlottesville, (800) 225–5345
Norfolk, (804) 857–6116
Richmond, (804) 353–2277
Roanoke, (800) 225–5345

Washington

Pasco, (800) 468–6856
Seattle, (206) 763–4222
Spokane, (509) 456–6200
Wenatchee, (800) 468–6856
Yakima, (800) 468–6856

West Virginia

Charleston, (800) 225–5345
Huntington, (800) 225–5345

Wisconsin

Appleton, (800) 242–5243
Green Bay, (414) 762–3372
Madison, (800) 242–5243
Manitowoc, (414) 762–3372
Wausau, (414) 762–3372
Milwaukee, (414) 762–3372

Wyoming

Casper, (800) 826–1063
Cheyenne, (800) 826–1063

Attachment B

Areas of Jurisdiction, Federal Supply Service Bureau, Traffic and Travel Services Zone Offices

Eastern Zone

Jurisdiction: AL, CT, DE, FL, GA, KY, MA, MD (note A), ME, MS, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, TN, VT, VA (note B), Virgin Islands, WV
Address: GSA, Attn: 4FBT, 75 Spring Street, SW., Atlanta, GA 30303
Telephone: FTS 242–5121, CML (404) 331–5121

Central Zone

Jurisdiction: IA, IL, IN, KS, MI, MN, MO, NE, OH, WI
Address: GSA, Attn: 6FBT, 1500 E. Bannister Road, Kansas City, MO 64131
Telephone: FTS (not available), CML (816) 523–6029

Southwestern Zone

Jurisdiction: AR, CO, LA, MT, ND, NM, OK, SD, TX, UT, WY
Address: GSA, Attn: 7FBT, 819 Taylor Street, Fort Worth, TX 76102
Telephone: FMS 334–2737, CML (817) 334–2737

Western Zone

Jurisdiction: AK, American Samoa, AZ, CA, GU, HI, ID, NV, Northern Mariana Islands, OR, Pacific Trust Territories, WA
Address: GSA, Attn: 9FBT, 525 Market Street, San Francisco, CA 94105
Telephone: FTS 454–9288, CML (415) 974–9288

National Capital Region (NCR)

Jurisdiction: DC, MD (note C), VA (note D)
Address: GSA, Attn: WFBT, 7th & D Streets SW., Washington, DC 20407
Telephone: FTS 472–1626, CML (202) 472–1626

Note A—Except for those counties under NCR jurisdiction as listed in note C.

Note B—Except for those cities and counties under NCR jurisdiction as listed in note D.

Note C—Counties of Prince Georges and Montgomery only.

Note D—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

[FR Doc. 87–3804 Filed 2–24–87; 8:45 am]
BILLING CODE 6820–24–M

41 CFR Part 101–47

[FPMR Amdt. H–160]

Report of Identical Bids

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule implements the provisions of Executive Order (E.O.) 12430 and eliminates the reporting requirements mandated under E.O. 10936. In implementing E.O. 10936, GSA required the disposal agency to report to the Department of Justice when identical bids were received in response to an invitation for bids for the sale of surplus real property. E.O. 12430 indicates that the reporting requirements of E.O. 10936 proved to be ineffective in preventing anti-trust violations.

EFFECTIVE DATE: This regulation is effective February 25, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Kearns, Jr., Office of Real Estate Policy and Sales (202–535–7052).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus government property, Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for Part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The Table of Contents for Part 101–47 is amended by removing and reserving the following entry:

101–47.304–8 [Reserved]

Subpart 101–47.3—Surplus Real Property Disposal

3. Section 101–47.304–8 is removed and reserved as follows:

§ 101–47.304–8 [Reserved]

Dated: February 2, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–3807 Filed 2–24–87; 8:45 am]
BILLING CODE 6820–96–M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2005

Disclosure of Information; Implementation of the Freedom of Information Act

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Interim final rule.

SUMMARY: These regulations establish the basic policies and procedures that the Commission on the Bicentennial of the United States Constitution will use to process requests for information from the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and other applicable laws.

DATE: Effective February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503, (202) USA–1787.

SUPPLEMENTARY INFORMATION:

Background

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98–101; 97 Stat. 719. The Commission is comprised of 23 members: the Honorable Warren E.

Burger, retired Chief Justice of the United States, serves as Chairman of the Commission. Additional information on Commission functions can be found in Title 45 of the Code of Federal Regulations Part 2000. The organization and functions rule covering Commission operations was published in the **Federal Register** as a final rule on February 28, 1986 (51 FR 7220).

Classification

This is not a major rule under E.O. 12291 since it has no significant impact upon the economy, nor does it affect prices or economic competition. This interim final rule has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

Public Comment

This is an interim final rule which is being put into effect so that the Commission can meet its statutory obligations concerning release of information to the public. Public comments are requested for a period of 60 days beginning on date of publication and ending on April 30, 1987. All comments received during this period will be considered; if changes are warranted, this rule will be amended.

Statutory Authority

This regulation is issued under authority granted by Pub. L. 98–101, as amended; and by 5 U.S.C. 552 as amended by sections 1801–1804 of the omnibus Anti-Drug Abuse Act of 1986 (Pub. L. 99–570; 100 Stat. 3207) which contains the Freedom of Information Reform Act of 1986.

List of Subjects in 45 CFR Part 2005

U.S. Constitution Bicentennial, Freedom of information.

Issued in Washington, DC, on February 17, 1987.

Mark W. Cannon,

Staff Director.

For the reasons set out in the preamble and under the authorities cited above, a new Part 2005 is added to Title 45 Code of Federal Regulations to read as follows:

PART 2005—DISCLOSURE OF INFORMATION

Subpart A—Purpose and Policies

Sec.

2005.1 Organization of Commission.
2005.2 Statement of policies.
2005.3 Where to make information requests
2005.4 Applicable laws and regulations.

Subpart B—Commission Responsibilities

2005.10 General Counsel action.
2005.11 Index of records.
2005.12 Fee policy.
2005.13 Interim fee schedule.

Subpart C—How To File Information Requests

2005.20 Form and content of requests
2005.21 Information not subject to release.

Subpart D—Processing Information Requests

2005.30 Prompt response to requests.
2005.31 Denials.
2005.32 Appeals.
2005.33 Judicial review.

Authority: Pub. L. 98–101 as amended; 5 U.S.C. 552 as amended by sections 1801–1804 of the omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570; 100 Stat. 3207).

Subpart A—Purpose and Policies

§ 2005.1 Organization of Commission.

Information about the organization and functions of the Commission on the Bicentennial of the United States Constitution ("the Commission") can be found in Title 45 Code of Federal Regulations Part 2000 and in Pub. L. 98–101, as amended. The organization and functions rule covering Commission operations was published in the **Federal Register** as a final rule on February 28, 1986 (51 FR 7220).

§ 2005.2 Statement of policies.

(a) It is the policy of the Commission to make available as soon as possible for public information, inspection and copying, all Commission approved resolutions, statements of policy and other final decisions affecting public programs and activities of the Commission. These include sponsorship and project recognition approvals, logo licenses, and public program decisions of the Chairman, Staff Director, and committees of the Commission when exercising delegated authority of the Commission. Notices and agenda of scheduled Commission meetings shall be announced publicly and the minutes of Commission meetings including records of voting shall be available to the public immediately following review and approval by Commissioners and the Chairman. Any person may examine and copy records listed in this paragraph at the Commission offices in Washington, DC, at reasonable times during normal working hours. Identifying details of any records referred to in this paragraph may be deleted to prevent unwarranted invasion of personal privacy and in any such case the justification for deletion will be fully explained in writing.

(b) Other official records of the Commission shall be available to the fullest extent possible consistent with the terms and policies of the Freedom of Information Act (FOIA), 5 U.S.C. section 552, as amended. On request they will be furnished promptly to any person for inspection and copying as set forth below provided the request reasonably describes such records and otherwise conforms with these regulations.

(c) Information currently furnished to the public in the regular course of official duties may continue to be furnished to the public without complying with this Part, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with this Part.

§ 2005.3 Where to make information requests.

(a) A member of the public may request information and records from the Commission by writing to the General Counsel of the Commission on the Bicentennial of the United States Constitution, Attn: FOIA officer, 736 Jackson Place NW., Washington, DC 20503. Requests for information and supervised access to Commission records may also be made in person at the office of the General Counsel between 9 a.m. and 5:30 p.m. Monday through Friday except holidays. The Office of General Counsel is located at 736 Jackson Place NW., Washington, DC; telephone (202) USA–1787.

(b) Except as provided below in § 2005.11 of this regulation, any request for Commission records made in person shall be submitted in writing form and signed by the requester.

(c) The General Counsel is designated the Freedom of Information Officer for the Commission and is hereby delegated the exclusive authority to act on all requests under FOIA for Commission documents and records.

§ 2005.4 Applicable laws and regulations.

The following laws and regulations are applicable to information requests made under this Part:

(a) The Freedom of Information Act (5 U.S.C. 552);

(b) Sections 1801–1804 of the Freedom of Information Reform Act of 1086 (Pub. L. 99–570; 100 Stat. 3207);

(c) The regulations in this Part 2005 and 45 CFR Part 2000; and

(d) Pub. L. 98–101, as amended by Pub. L. 99–549.

Subpart B—Commission Responsibilities

§ 2005.10 General Counsel action.

The General Counsel or his designee is responsible for ensuring that all

Commission programs, activities and personnel comply with the requirements of FOIA and these regulations.

§ 2005.11 Index of records.

(a) The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated by authority of the Commission and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication of such indices in the Federal Register has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefore made in accordance with § 2005.12.

(b) A copy of the index shall be available at the offices of the Staff Director and General Counsel respectively.

§ 2005.12 Fee policy.

(a) When records are being requested for commercial use, the fee policy of the Commission is to levy reasonable standard charges for document searching, duplication, and review. "Commercial use" is defined to mean use of requested documents for resale, or use for private financial gain.

(b) When records are being requested by representatives of the media, the fee policy of the Commission is to levy reasonable standard charges only for document duplication.

(c) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Commission is the levy reasonable standard charges only for document duplication.

(d) For any other request which does not meet the criteria contained in § 2005.12 (a through c), the fee policy of the Commission is to levy reasonable standard changes for document search and duplication.

(e) The Commission may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(f) A fee waiver request shall indicate how the information will be used, to whom it will be provided and whether the requester intends to use the information for resale at a fee above actual cost.

§ 2005.13 Interim fee schedule.

(a) The Freedom of Information Reform Act of 1986 requires that all agencies develop a uniform schedule of fees after the Office of Management and Budget (OMB) develops regulatory guidance designed to help agencies develop uniform fee schedules. Until the OMB fee guidance regulations are developed and the Commission establishes a new uniform fee schedule, the Commission will levy fees according to § 2005.13 (b) and (c).

(b) A fee may be charged for direct costs of document duplication at the rate of $0.15 per page for copying, and for search and review at the rate of $2.50 per quarter hour for clerical time expended in identifying and locating records. When professional staff must be used to conduct search and reviews, their time will be billed at $5.00 per quarter hour.

(c) Fees for duplication of audio, video, automated tapes and other electronic records will be charged at the actual cost to the Commission.

(d) The Commission may limit the number of copies of any document or record provided to any person.

Subpart C—How To File Information Requests

§ 2005.20 Form and content of requests.

(a) A request for access to official records shall reasonably describe the records requested so that Commission personnel will be able to locate them with a reasonable amount of effort. When possible, specific information regarding project names, dates, titles, file designations, and other data which may help identify the records should be supplied by the requester.

(b) Any request submitted in writing should be clearly identified as a request made pursuant to the Freedom of Information Act by labeling the envelope with the letters FOIA and referring to FOIA in the body of the letter.

§ 2005.21 Information not subject to release.

(a) The provisions of 5 U.S.C. 552 which require that agencies make their official records available for public inspection and copying do not apply to Commission records which are:

(1) Related solely to the internal personnel rules and practices of the Commission;

(2) Specifically exempted from disclosure by statute;

(3) Trade secrets, proprietary material, information which is privileged, and information furnished in confidence which relates to the business, personal of financial affairs of any person or organization;

(4) Inter-agency and intera-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission; or

(5) Personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b) Any reasonably segregable portion of an official record shall be provided upon request after deletion of any portion of the requested record which is exempt from disclosure under this § 2005.21.

Subpart D—Processing Information Requests

§ 2005.30 Prompt response to requests.

(a) Within ten working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the General Counsel or his designee shall determine whether to comply with or deny such request in whole or in part and shall transmit such determination to the requester, unless an extension is made under paragraph (c) of this section. A legal public holiday is one established by the Congress.

(b) Only the General Counsel or his designee may deny a request. The General Counsel is the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a). If a denial is made at the behest of another agency, the person in that agency responsible for urging the denial may also be a "person responsible for the denial" if he or she is so advised before the General Counsel informs the requester that a request is denied.

(c) In unusual circumstances as specified in this paragraph, the General Counsel may extend the time for the initial determination of a request up to a total of ten working days (excluding Saturdays, Sundays and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reason for the extension and the date upon which a determination is expected to be transmitted. The Commission may exercise the extended response option when there is a need to:

(1) Search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) Search for, collect, and review a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having substantial interest in the determination in the request, which consultations shall be conducted with all practical speed.

(d) If no determination has been transmitted at the end of the ten-day working period, or the last extension thereof, the requester may deem a request denied, and exercise a right of appeal in accordance with § 2005.32. When no determination can be transmitted within the applicable time limit, the General Counsel shall nevertheless continue to process the request. On expiration of the time limit, the requester shall be informed of the reason for the delay and of the day on which a determination is expected to be transmitted. The requester shall also be informed of his or her rights (1) to treat the delay as a denial and file for judicial review under 5 U.S.C. (a)(4)(B) and § 2005.33 of this Part, and (2) to appeal to the Staff Director in accordance with § 2005.32. The requester may also be asked to forgo an appeal until a determination is made.

§ 2005.31 Denials.

(a) A reply denying a request for any records, in whole or in part, shall be in writing, signed by the General Counsel, and shall include: (1) a specific reference to the exemption or exemptions under the FOIA authorizing the withholding of the record; (2) a brief explanation of the exemption(s) applicable to the record(s) withheld; and (3) a statement indicating how the denial may be appealed (see § 2005.32 of this part).

(b) Judicial review is thereafter available as set forth in §§ 2005.32(d) and 2005.33 of this part.

§ 2005.32 Appeals.

(a) When the General Counsel has denied a request for a record in whole or in part, the requester may appeal to the Staff Director of the Commission within 30 days after receiving the denial notification. Appeals shall be in writing, addressed to the Staff Director, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503.

(b) The Staff Director will act upon an appeal within twenty working days (excluding Saturdays, Sundays or legal public holidays) of its receipt, unless an extension is made under paragraph (c) of this section.

(c) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten working days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to § 2005.30(c). Such extension shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be transmitted. The Staff Director of the Commission may exercise the extended response option for appeals for any of the reasons set forth in paragraphs (c)(1) through (c)(3) of § 2005.30.

(d) If no determination of the appeal has been transmitted at the end of the twenty-day working period or the last extension thereof, the requester is deemed to have exhausted all administrative remedies and thereupon has a right to judicial review in a United States District Court as specified in 5 U.S.C. 552(a)(4). When no determination can be made by the agency within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be transmitted, and of the right to seek judicial review in the United States District Court in the district in which he or she resides or has a principal place of business, the District in which the records are situated, or the District of Columbia. The requester may be asked to forego judicial review until the Commission's Staff Director has made a determination of how to respond to the appeal.

(e) The Staff Director's determination on the appeal shall be made in writing and transmitted at once to the FOIA requester. An affirmance, in whole or in part, of a denial of a requester for records shall include:

(1) A reference to a specific exemption or exemptions under FOIA authorizing the withholding of the record;

(2) A brief explanation of how the exemption(s) applies to the record(s) withheld, and

(3) A statement that judicial review of the decision on appeal is available as set forth in § 2005.33 of this part.

§ 2005.33 Judicial review.

Judicial review of a denial of a request under § 2005.31, or a denial of an appeal under § 2005.32, is available in a United States District Court

(a) For the judicial district in which the requester resides or has a principal place of business, or

(b) For the judicial district in which the agency records are situated, or

(c) For the District of Columbia.

Jurisdiction of the Court is granted under 5 U.S.C. 552(a)(4)(B).

[FR Doc. 87–3879 Filed 2–24–87; 8:45 am]
BILLING CODE 6340–01–M

Proposed Rules

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–03–AD]

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require installation of a hydraulic fuse in the number 4 hydraulic system. This proposal is prompted by a report of loss of all four hydraulic systems when failure of the rear pressure bulkhead resulted in loss of the vertical stabilizer, which in turn severed the hydraulic lines. Without the hydraulic fuse, loss of the vertical stabilizer could result in loss of all four hydraulic systems and inability to control the airplane.

DATES: Comments must be received no later than April 16, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–03–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–03–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

In August 1985, a Boeing Model 747SR–100 airplane was involved in an accident after failure of the aft pressure bulkhead allowed air from the pressurized cabin to enter the vertical stabilizer (fin); this caused the loss of portions of the fin leading edge and, ultimately, the major part of the fin itself. As all four hydraulic systems are present in the fin, loss of that surface resulted in all four hydraulic systems being lost. Since the Model 747 has fully-powered irreversible flight control surfaces driven by hydraulic actuators with no manual back-up, the pilot had no control over the airplane attitude other than some limited pitch control using differential thrust. Although the pilot could not effectively control the flight path nor the attitude of the airplane, it continued to fly for approximately 30 minutes before it crashed.

If one hydraulic system could be retained to provide limited control over the pitch and roll attitudes of the airplane, the pilot would have some control over the flight path and could land the airplane, assuming other factors did not render the airplane unflyable. A hydraulic fuse, installed in the hydraulic line where it enters the fin, would prevent the loss of that system in the event that excessive leakage occurred in the hydraulic tubing in the vertical stabilizer, thus preserving hydraulic power to some elevator, aileron, and spoiler surfaces.

The FAA has reviewed and approved Boeing Service Bulletin 747–29–2063, dated December 23, 1986, which describes the installation of a hydraulic fuse in the number 4 hydraulic system of Boeing Model 747 airplanes, to prevent the loss of all four hydraulic systems in the event of severe damage to or loss of the vertical stabilizer.

Since this condition may develop on other airplanes of this same type design, an AD is proposed which would require the installation of a hydraulic fuse in the number 4 hydraulic system on all Boeing Model 747 airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 27 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts are estimated at $1,271 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $265,663.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation

prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747–29–2063, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of all four hydraulic systems in the event of severe damage to or loss of the vertical stabilizer, accomplish the following:

A. Within the next 24 months after the effective date of this AD, modify the number 4 hydraulic system by installing a hydraulic fuse in accordance with Boeing Service Bulletin 747–29–2063, dated December 23, 1986, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3790 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Parts 215, 298 and 389

[OST Docket No. 44684, Notice No. 87–3]

Use and Change of Names of Air Carriers, Foreign Air Carriers and Commuter Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to eliminate its detailed rules on air carrier name changes and replace it with a simple name registration system. This approach would eliminate the Department's role in determining whether air carrier name similarities may cause public confusion. This would encourage carriers to resolve potential problems among themselves and use existing legal protections without unnecessary government intervention. However, it would not prevent the Department from taking enforcement action, when necessary, against unfair and deceptive practices under section 411 of the Federal Aviation Act. The regulation would be expanded to cover commuter air carriers and makes a conforming change to Part 298. It also would reduce the Department's fees for air carrier name changes in Part 389.

DATE: Comments on the proposal must be received on or before April 27, 1987.

ADDRESS: Comments on the proposal may be mailed in duplicate to Documentary Services Division, C–55, Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, DC 20590. In order to facilitate the Department's review, we request that four additional copies of the comments be submitted and that commenters include a reference to the docket number of their last application, if any. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgement of their comments' receipt should include a stamped, self-addressed postcard with their comments. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Joseph Brooks or Juliana Winters, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, (202) 366–9349 or Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement, (202) 366–9305.

SUPPLEMENTARY INFORMATION: Part 215 of the Department's regulations (14 CFR Part 215) requires direct certificated air carriers and direct foreign air carriers to use the names in which their operating authorizations were issued. It sets out a detailed process by which those carriers may apply to change their names or to use names different from those on their operating authorizations. The Department reviews each application to determine whether there is potential for name confusion and whether a name change is in the public interest.

Name similarity cases arise in connection with both name change applications and initial fitness cases. The number of name similarity cases before the Department has increased due to the growing number of carriers holding and seeking authority and the fact that these carriers often select geographic names descriptive of their area of operations. Because of the number of carriers providing similar or overlapping service, the same or similar names are often proposed by more than one carrier.

The Civil Aeronautics Board adopted Part 215 during a period of strict regulation in order to protect carriers and the public from confusion and unfair and deceptive practices prohibited by section 411 of the Federal Aviation Act. However, the present rules are duplicative of existing legal protections and inconsistent with the deregulation of the airline industry. They do not encourage air carriers to resolve potential problems among themselves as do other unregulated businesses. In addition, they impose an undue burden on the industry; competitors are citing the use of arguably similar names as reasons to object to new applicants, thereby unnecessarily complicating and delaying the certification process. This serves to impede new entry because of the time and cost to an applicant of having to respond to such objections, which do not relate to the applicant's ability to operate.

The Department is proposing to eliminate the existing rule and replace it with a simple name change registration system. This approach would eliminate the Department's role in determining whether the prospective use of a particular name may cause public confusion. The revised rules still would require that an air carrier use the name under which its operating authorization or other authority was issued. However, if the carrier wants to change its name or use a different business name, it would be able to register the new name with the Department and begin using the name immediately after the registration is accepted. Any application for initial, reissued, or transferred authority, including commuter air carrier

registrations and amendments, would be considered as containing a registration of the intended name. This change would eliminate the need to file a separate name registration document. A carrier requesting use of a trade name, without seeking reissuance of its underlying certificate or foreign air carrier permit or exemption authority, would file a statement with the Office of Aviation Operations registering its intended name.

In either case, the Department would compare the proposed name with a list of names, maintained by the Office of Aviation Operations, used by existing U.S. and foreign air carriers. The Department would notify the applicant about similar names on the air carrier register. The applicant would then have to notify those carriers of its application and send the Department a certificate of service that it has notified any similarly named carriers. The Department would then acknowledge the registration and issue a notice announcing the new name, or reissue the applicant's authority in its new name.

The proposed registration system would be purely ministerial, both in terms of what the applicants are required to do and the Department's role in administering the system. The Department would exercise no substantive review of name confusion issues in the context of the proposed registration process or its licensing functions. Consequently, challenges to the registration of a particular name would not be accepted or considered in that context.

The proposed changes would in no way affect the recourse available to the Department to take enforcement action under section 411 of the Act for unfair or deceptive practices. Enforcement action could be taken on a complaint or on the Department's own initiative. Such action, however, will generally not prevent or delay the registration of a name that complies with the proposed procedures, or otherwise serve to complicate or delay the certification process. The registration of a name by the Department would become essentially ministerial, and would not be a judgment about its acceptability with respect to section 411.

The Department's withdrawal from the strict regulation of what is essentially, in most cases, a private matter between carriers would encourage carriers to resolve problems informally or use alternate avenues for protection available through other government agencies, State laws and the courts. The Patent and Trademark Office of the Department of Commerce administers the Lanham Act (14 U.S.C. 1050–1127), which protects and ensures the proper use of registered trade names and trademarks. It specifically addresses the likelihood of confusion among similar or identical names. Recent litigation under that Act has expanded the type of false or misleading advertising deemed prohibited and the type of plaintiffs protected. It can protect air carriers, and now indirectly consumers, under standards applicable to other industries.

Although the Lanham Act does not exclude air carriers, very few air carriers now participate in registration under that Act. Similarly, available State court and common law remedies also have been underused, perhaps because of the regulation in this area. The Federal Communications Commission took action 2 years ago, which is similar to what is being proposed here, by revising its rules so that it no longer resolves disputes about similarities in call letters. These disputes are now handled under the Lanham Act and by State and local courts.

Although Part 215 does not now apply to commuter carriers, the same name similarity issues arise with these carriers in the context of their applications for fitness. In those cases, name issues generate numerous pleadings, often peripheral to the case. Under the proposed rule, commuters would be treated as other carriers in this respect. Because of the changes in Part 215, no new burden would be imposed on commuters.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions.

Furthermore this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979. It involves the elimination of unnecessary procedural requirements. A full regulatory evaluation has not been prepared since the overall impact of the proposal is expected to be minimal with the only impact being reduced administrative costs on the Federal Government and possibly some reduced paperwork on the part of applicants and certificate holders.

In this regard, we estimate that under the current rules, the Department spends a minimum of 60 hours of staff time on each controversial case, at an approximate cost to the Department of $1,080 per case. Under the proposed registration system, we estimate that one hour of staff time will be needed to review the proposed name, contact the applicant about carriers with similar names, and issue a notice announcing the new trade name and two hours will be needed to follow the same procedure and reissue a certificate in the new name. The weighted average unit cost per case will be approximately $56. The proposed rule would reduce the Department's fees for air carrier name changes in Part 389 ($165 for domestic and $125 for foreign) to $56 for each change.

I certify that this proposal will not have a significant economic impact on a substantial number of small entities. It will have no impact on the environment. It would not impose any reporting or paperwork requirements under the Paperwork Reduction Act in addition to those already approved by the Office of Management and Budget under control number 3024–0064.

List of Subjects

14 CFR Part 215

Air Carriers, Foreign air carriers, Trade names.

14 CFR Part 298

Air taxis, Alaska, Antitrust, Consumer protection, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 389

Archives and records.

Accordingly, the Department proposes to amend 14 CFR Parts 215, 298 and 389 as follows:

1. Part 215 is revised to read as follows:

PART 215—USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS

Sec.

215.1 Applicability.
215.2 Purpose.
215.3 Use of name.
215.4 Change of name or use of trade name.

Sec.
215.5 Procedure in cases of similarity of names.
215.6 Acknowledgment of registration.

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1381, 1386, 1387.

§ 215.1 Applicability.

This part applies to all certificated air carriers, commuter air carriers, and foreign direct air carriers and to initial or amended applications for authority, applications for certificate or permit transfers or reissuances, and registration of business names.

§ 215.2 Purpose.

This part sets rules under which direct air carriers may use the names in their operating authorizations and change those names. It further provides for notification to air carriers that may be affected by the use by other air carriers of the same or similar names. Its purpose is to place the responsibility for resolving private disputes about the use of similar names with the air carriers involved, through recourse to the trade name statutes and the courts. These rules do not preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

§ 215.3 Use of name.

In holding out to the public and in performing air transportation services, a direct air carrier or foreign direct air carrier subject to this part shall use only the name in which its operating authorization is issued or trade name is registered. Except as provided in §§ 221.21(j) and 221.35(d) of this chapter, minor variations in the use of this name, including abbreviations, contractions, initial letters, or other variations of the name that are readily identifiable with the authorized name, are permitted. Slogans and service marks shall not be considered names for the purpose of this part, and their use is not restricted.

§ 215.4 Change of name or use of trade name.

(a) *Registrations.* Any air carrier subject to this part that desires to change the name in which its operating authorization has been issued, or to use a trade name, or to obtain initial operating authority must register the name with the Department. The Department will construe any application for initial, reissued, or transferred authority, as well as any commuter air carrier registration or amendment filed under Part 298, as containing a "registration" of the intended name. A separate name registration document need not be filed. A carrier registering use of a trade name, without seeking reissuance of its underlying certificate or foreign air carrier permit or exemption authority, must file a statement that complies with §§ 302.3 and 302.4 of this chapter registering its intended name with the Office of Aviation Operations.

(b) *Montreal Agreement.* Each registration under this section shall be accompanied by three copies of a counterpart to the Montreal Agreement (Agreement 18900) (OST Form 4523) signed by the carrier using the proposed name. Upon approval of the application, the Department will place a copy of the signed OST Form 4523 in Docket 17325.

(Reporting and recordkeeping requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024–0064)

§ 215.5 Procedure in cases of similarity of names.

The Department will compare the proposed name in any registration filed under this part or in an application for new, reissued, or transferred authority with a list of names used by existing certificated, commuter and foreign direct air carriers. The Department will notify the applicant of any other certificated, foreign or commuter carriers that may have an identical or similar name. The registrant must then notify those carriers of its registration. The notification will identify the applicant and state its proposed name or the name requested, area of operation or proposed area of operation, type of business, and other pertinent matters. The registrant must then file a certificate of service of the notification with the Department.

§ 215.6 Acknowledgment of registration.

After completion of the filing and notification requirements of this part, the Department may acknowledge the registration by notice in the action granting the application for initial operating authority, transfer, or reissuance or in approving the commuter registration, or by separate notice in the case of use of a trade name. Non-action under this provision shall not be construed as an adjudication of any rights or liabilities.

PART 298—EXEMPTIONS FOR AIR TAXI OPERATIONS

2. The authority citation for Part 298 continues to read as follows:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, 419, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771, 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

3. Section 298.36 would be amended by revising paragraph (a) as follows:

§ 298.36 Limitation on use of business name.

(a) An air taxi operator in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier operating certificate is issued pursuant to section 604 of the Act by the Federal Aviation Administration, and in which it is registered with the Department under this part.

* * * * *

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

4. The authority citation for Part 389 continues to read as follows:

Authority: Secs. 204, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

5. Section 389.25 would be amended by revising the following fees:

§ 389.25 Schedule of processing fees.

Code	*Document*	
Interstate and Overseas Air Transportation		
*	*	*
8	Change of Name (registration of trade name or reissuance of certificate)	56
*	*	*
Foreign Air Transportation (U.S. and Foreign Air Carriers)		
*	*	*
19	Change of Name (registration of trade name or reissuance of certificate)	56
*	*	*

Issued this 12th day of February 1987, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 87–3665 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 22 and 51

[SD–203]

Schedule of Fees for Consular Services and Refund of Fees

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend its regulations to provide that refunds of fees or other payments for amounts totaling $5.00 or less will not be made unless specifically

requested by the person who has overpaid. If adopted, the amendment would eliminate the cost to the Department and to the Treasury of processing and mailing checks that is not commensurate with the amounts involved. The amendment to the regulation would save the Government a considerable amount of money and time.

DATES: Comments must be submitted on or before April 27, 1987.

ADDRESSES: Comments may be mailed to Office of Citizenship Appeals and Legal Assistance, Department of State, Suite 300, 1425 K Street, NW., Washington, DC 20524.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Telephone (202) 326–6172.

SUPPLEMENTARY INFORMATION: Present regulations provide for the refund of any excess fees submitted to the Department or posts abroad with a passport application or a request for other consular services. When individuals remit payments in excess of the amount due, the Department deposits the payments directly into the U.S. Treasury and then requests the Treasury to refund any excess.

It has been established that refunds of $50.00 or less are not cost effective. Approximately 65 percent of refunds are for overpayments of two dollars or less. The cost of processing these refunds far exceeds the amounts to be refunded. The Comptroller General in Decision B–220942 has approved that refunds of overpayments of $5.00 or less should not be made unless specifically claimed.

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 301 et seq.), it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The provisions of the Paperwork Reduction Act do not apply. (44 U.S.C. Ch. 35).

List of Subjects

22 CFR Part 22

Foreign Service, Passports and Visas.

22 CFR Part 51

Passports and Visas.

PART 22—[AMENDED]

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a; 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632; E.O. 11295, 31 FR 10603; 3 CFR, 1954–1958 Comp. p. 507 unless otherwise noted.

2. Section 22.6 is revised to read as follows:

§ 22.6 Refund of fees.

(a) Fees which have been collected for deposit in the Treasury are refundable: (1) As specifically authorized by law (See 22 U.S.C. 214a concerning passport fees erroneously charged persons excused from payment, 22 U.S.C. 216 concerning passport fees in cases where the appropriate representative in the United States of a foreign government refuses a visa and 46 U.S.C. 8 concerning fees improperly imposed on vessels or seamen); (2) when the principal officer at the consular post where the fee was collected (or the officer in charge of the consular section at a combined diplomatic/consular post) finds upon review of the facts that the collection was erroneous under applicable law; and (3) where determination is made by the Department of State with a view to payment of a refund in the United States in cases where it is impracticable to have the facts reviewed and refund effected by and at the direction of the responsible consular office. See § 13.1 of this chapter concerning refunds of fees improperly exacted by consular officers who have neglected to return the same.

(b) Refunds of $5.00 or less will not be paid to the remitter unless a claim is specifically filed at the time of payment for the excess amount. An automatic refund on overpayments due to misinformation or mistakes on the part of the Department of State will be made.

PART 51—[AMENDED]

3. The authority citation for Part 51 is revised to read as follows:

Authority: 44 Stat. 887; 63 Stat. 111, as amended; 22 U.S.C. 211a–218, 2651, 2658; E.O. 11295, 31 FR 10603; 3 CFR, 1966–1970 Comp. p. 507, unless otherwise noted.

4. In section 51.64 a new paragraph (e) is being added:

§ 51.64 Refunds.

* * * * *

(e) For procedures on refunds of $5.00 or less, see § 22.6(b) of this title.

Dated: December 18, 1986.

For the Secretary of State.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 87–3817 Filed 2–24–87; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of proposed amendments submitted by Oklahoma as modifications to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of revised regulations for several parts of its program.

This notice sets forth the times and locations that the Oklahoma program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on April 13, 1987, will not necessarily be considered in the decision process. A public hearing on the proposed amendments has been scheduled for 9:00 a.m. on March 27, 1987, at the address shown below under **"ADDRESSES".** Any person interested in making an oral or written presentation at the hearing should contact Mr. James H. Moncrief at the OSMRE Tulsa Field Office by 4:00 p.m. on March 17, 1987. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the Oklahoma administrative record.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Tulsa, Oklahoma 74103.

Copies of the Oklahoma program, the proposed modificatioins to the program, and the administrative record of the Oklahoma program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103. Telephone: (918) 581–7927

Oklahoma Department of Mines, 4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105. Telephone: (405) 521–3859

Office of Surface Mining Reclamation and Enforcement 1100 "L" Street NW., Room 5124, Washington, DC 20240. Telephone: (202) 343–4855

The public hearing, if requested, will be held at the Federal Building, 125 South Main Street, Muskogee, Oklahoma 74401.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Tulsa, Oklahoma 74103. Telephone: (918) 581–7927..

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981 (46 FR 4910). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981 **Federal Register** (49 FR 4910), in the April 2, 1982 **Federal Register** (47 FR 14152), in the May 4, 1983 **Federal Register** (48 FR 20050) and the August 28, 1984 **Federal Register** (49 FR 34000). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 936.11 and 936.15.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(d) through (f), on July 15, 1985, the Director notified Oklahoma of the changes necessary to ensure that the approved regulatory program, as revised since January 19, 1981, when the program was originally approved, was no less stringent than SMCRA and no less effective than the Federal regulations. To comply with this letter and to meet other needs and State objectives, the State elected to undertake a complete rewrite of the regulations governing its permanent regulatory program.

By letter dated January 16, 1987, Oklahoma submitted several sections of these regulations to OSMRE for review as program amendments (Administrative Record No. OK–780). The proposed regulations, consisting of Parts 707, 779, 780, 784, 816, 817, 845 and 850, would replace those Parts of the currently approved regulatory program. The proposed regulations concern the exemption for coal extraction incident to government-financed construction, permit application requirements, performance standards, civil penalties, and blaster training and certification.

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If approved, the proposed amendments will become part of the Oklahoma permanent regulatory program.

III. Procedural Requirements

1. Compliance with the National Environment Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements but rather would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 18, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–3858 Filed 2–24–87; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 10

Proposed Express Mail International Service to Indonesia

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to an agreement with the postal administration of Indonesia, the Postal Service intends to begin Express Mail International Service with Indonesia at postage rates indicated in the tables below.

DATE: Comments must be received on or before March 26, 1987.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260–5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8620, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5350.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, [202] 268–2673.

SUPPLEMENTARY INFORMATION: The International Mail Manual is incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1. Additions to the manual concerning the proposed new service, including the rate tables reproduced below, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking [5 U.S.C. 553] do not apply [39 U.S.C. 410[a]], the Postal Service invites interested persons to submit written data, views or arguments concerning the proposed Express Mail International Service to Indonesia at the rates indicated in the table below.

Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552[a], 39 U.S.C. 401, 404, 407, 408.

INDONESIA EXPRESS MAIL INTERNATIONAL SERVICE

Custom Designed Service [1] [2]		On Demand Service [2]	
Up to and Including		Up to and Including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	36.90	2	28.90
3	42.80	3	34.80
4	48.70	4	40.70
5	54.60	5	46.60
6	60.50	6	52.50
7	66.40	7	58.40
8	72.30	8	64.30
9	78.20	9	70.20
10	84.10	10	76.10
11	90.00	11	82.00
12	95.90	12	87.90
13	101.80	13	93.80
14	107.70	14	99.70
15	113.60	15	105.60
16	119.50	16	111.50
17	125.40	17	117.40
18	131.30	18	123.30
19	137.20	19	129.20
20	143.10	20	135.10
21	149.00	21	141.00
22	154.90	22	146.90

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-3796 Filed 2-23-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3160-2]

Approval and Promulgation of Implementation Plans, Massachusetts; Control of Volatile Organic Compound Emissions From the Manufacture of Polystyrene Resins

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts on November 8, 1985, February 21, 1986, and June 23, 1986. This revision will approve a regulation to reduce volatile organic compound (VOC) emissions from the manufacture of polystyrene resins. The intended effect of this action is to approve this regulation in accordance with commitments Massachusetts made in the ozone attainment plan approved by EPA for the Commonwealth to regulate such sources. This action is being taken under section 110 of the Clear Air Act.

DATES: Comments must be received on or before March 27, 1987. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmenal Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565-3250; FTS 835-3250.

SUPPLEMENTARY INFORMATION:

Background

In its 1982 ozone attainment plan approved on November 9, 1983 (48 FR 51480), the Commonwealth of Massachusetts committed to adopt reasonably available control technology (RACT) regulations for all sources categories covered by Group III Control Technique Guidelines (CTG).

EPA published the Group III CTG for "Control of Volatile Organic Compound Emissions from the Manufacture of High Density Polyethylene, Polypropylene, and Polystyrene Resins" in November 1983 which specifies RACT for VOC emissions from the manufacture of these products. Therefore, the Commonwealth of Massachusetts must either adopt RACT regulations for each of these source categories or submit a certification that no such sources are located within its boundaries. This certification of no sources is commonly referred to as a negative declaration.

Negative Declaration

On November 8, 1985, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a letter certifying that the Commonwealth of Massachusetts has no polypropylene or polyethylene manufacturing sources. EPA intends to codify this certification in 40 CFR Part 52 at the time of final rulemaking on today's action.

Regulation for Manufacture of Polystyrene Resins

On February 21, 1986, DEQE submitted revisions to its ozone attainment plan. These revisions include: (1) Two new definitions, (2) a change to one definition, and (3) a regulation to control the emissions of VOCs from the manufacture of polystyrene resins. The two new definitions being added to 310 CMR 7.00 are for (1) "continuous process polystyrene resins manufacturing plant" and (2) "material recovery section". Each of these definitions is consistent with Federal guidance.

The DEQE amended the SIP definition of "VOC" to include methane and ethane as compounds of carbon not considered to be VOCs. This revision is consistent with EPA's definition of VOCs as stated in "Glossary for Air Pollution Control of Industrial Coating Operations" (EPA-450/3-83-013) and "Recommended Policy on Control of Volatile Organic Compounds", 42 FR 35314 (July 8, 1977). The July 8, 1977 **Federal Register** listed methane and ethane as having negligible photochemcial reactivity that should be exempt from regulation under SIPS. In addition, this change was made to make the definition consistent with the Commonwealth of Massachusetts' current practice.

The regulation to control VOC emissions from the manufacture of polystyrene resins, 310 CMR 7.18(18), requires that no continous process polystyrene resins manufacturing plant or facility shall emit in excess of 0.12 pounds of VOC per 1,000 pounds of product from the material recovery section. It also requires that any owner or operator of a facility subject to this regulation shall, within 150 days of the effective date of 310 CMR 7.18(18), either (1) demonstrate compliance or (2) submit a proposed compliance schedule that justifies to the Department that additional time is necessary. This proposed compliance schedule must achieve emission limitations contained in 310 CMR 7.18(18) as expeditiously as practicable, but not later than December 31, 1986. Any compliance testing shall be performed in accordance with Test Methods 2 and 25 as cited in 40 CFR Part 60, Appendix A. Additionally, the regulation requires that the use of any other methods must be approved by both the DEQE and EPA.

On June 23, 1986, the DEQE submitted a letter stating that the DEQE adopted implementation guidance, developed for the regulation, which sets forth the requirements for "Reporting and Recordkeeping" and "Compliance Testing and Monitoring." Therefore, EPA is proposing to approve amendments to Massachusetts regulation 310 CMR 7.00 and the addition of 310 CMR 7.18(18), including the implementation guidance adopted pursuant to that regulation, as revisions to the SIP.

EPA is proposing to approve this Massachusetts SIP revision and is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve the revisions to 310 CMR 7.00 and 310 CMR 7.18(18), including the implementation guidance adopted pursuant to that regulation, submitted by the DEQE on February 21 and June 23, 1986, as well as the State's negative declaration submitted on November 8, 1985.

Under 5 U.S.C. section 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of sections 110(a)(2)(A) through (K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxide, Nitrogen oxides, Lead, Particulate matter, Caron monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7410–7642.

Dated: October 14, 1986.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 87–3835 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–5–FRL–3160–5]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the State of Michigan's total suspended particulate (TSP) State Implementation Plan (SIP) for Michigan Act No. 65 of the Public Acts of 1986. Michigan's submittal of April 29, 1986, for Air Pollution Control Act (APCA) No. 65 revises the State's 1965 APCA No. 348, with respect to: (1) Car ferries having the capacity to carry more than 110 motor vehicles and (2) coal-fueled trains used in connection with tourism. USEPA believes that approval of this SIP revision will not jeopardize the attainment and maintenance of any national ambient air quality standard (NAAQS).

DATE: USEPA must receive comments on or before March 27, 1987.

ADDRESSES: Comments should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Please submit an original and three copies if possible. You may inspect copies of the submittal and USEPA's evaluation during normal business hours at:

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V, 230 South Dearborn, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On April 29, 1986, the State of Michigan submitted APCA No. 65, an amendment to Act No. 348 of the 1965 Michigan APCA, as a revision to the Michigan TSP SIP. That submittal also included technical support documentation in the form of emission monitoring data and a screening analysis for the source, which indicated that the car ferry emissions have demonstrated no effect on attainment or maintenance of the NAAQS for TSP resulting from uncontrolled operation of this source. APCA No. 65 was approved by the Governor of the State of Michigan on March 30, 1986. This Act amended APCA No. 348 of 1965 by adding Section 7a; which (first) exempts car ferries having the capacity to carry more than 110 motor vehicles and (second) exempts from the requirements of APCA No. 348, coal-fueled trains used in connection with either tourism, or the transportation of works of art, or items of historical interest.

USEPA has reviewed APCA No. 65 with respect to its impact on the attainment and maintenance of the NAAQS for all applicable criteria pollutants. In order for this revision to be approvable, it must be demonstrated that this SIP revision will not jeopardize attainment and maintenance of the NAAQS.

Car Ferries

Currently, the only car ferry operation to be affected by Michigan's APCA No. 65 is located in the City of Ludington, Mason County and is owned by the Michigan-Wisconsin Transportation Company. This Company operates a single car ferry ("City of Midland") between Ludington, Michigan and Kewaunee, Wisconsin on a daily basis. Ludington, Michigan is currently in attainment of all NAAQS and has one monitoring site in use. The nearest monitor to the ferry docks in Ludington did not record any exceedances of the TSP standards during the years of the monitor's operation (1977–1981); at which time two car ferries were in operation and the City of Ludington was designated as a TSP secondary nonattainment area.

Analysis of the receptor filters from the days when nonattainment level readings were recorded, showed no particulate matter traceable to car ferry emissions. USEPA believes that Michigan has made an adequate demonstration based on screening modeling with the Industrial Source Complex (ISC) model; assuming a maximum idling time of four hours in Ludington, Michigan, the impact of the car ferry service is less than the Prevention of Significant Deterioration (PSD) significant impact level of five micrograms per cubic meter on a 24-hour basis.

Coal-Fueled Trains

USEPA has reviewed APCA No. 65 with respect to the exemption of special coal-fueled trains. Michigan has only a few coal-fueled trains known to exist

that operate as amusement rides and tourist attractions. There are presently no coal-fueled trains in existence on commercial railroad lines. The only train that operates on a semi-regular basis is known as the "Art Train". The Art Train usually operates from early Spring to late Fall traveling from one city to another on a weekly basis.

USEPA believes the specific exemptions for tourism, transporting works of art, and transporting historical artifacts, contained in Michigan's APCA No. 65, have a negligible impact upon attainment and maintenance of the NAAQS.

USEPA's complete review of this SIP revision is contained in technical support documents (TSDs) dated July 18, 1986, and October 27, 1986. USEPA is today proposing to approve the Michigan Act No. 65 of the Public Acts of 1986 as a revision to the Michigan TSP SIP. USEPA believes that approval of this SIP revision will not jeopardize the attainment and maintenance of any NAAQS as a result of uncontrolled operation of this source.

A 30-day public comment period is being provided for this notice of proposed rulemaking. Public comments received on or before March 27, 1987, will be considered in USEPA's final rulemaking action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: December 23, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–3836 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–7–FRL–3160–7]

Approval and Promulgation of the Nebraska; State Implementation Plan for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to fully approve the Nebraska State Implementation Plan (SIP) for lead. All portions of the plan had been previously approved except as it pertained to Omaha. EPA approved portions of the Omaha lead SIP on January 31, 1985, but withheld approval of the control measures. Since that time, the state of Nebraska has developed and submitted, in draft form, a revised demonstration of attainment for lead in Omaha. This action proposes to approve the revised demonstration of attainment including the control measures which support that demonstration and requests public comment on that action.

DATES: Comments must be received on or before March 27, 1987.

ADDRESSES: Comments may be mailed to Dewayne E. Durst, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the state submittal and EPA's evaluation are available for inspection during normal business hours at the Region VII office at the above address and at the Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (913) 236–2893, FTS 757–2893.

SUPPLEMENTARY INFORMATION: On January 31, 1985, EPA approved the Omaha lead SIP except for the control measures (48 FR 4510). These control measures were to be applied at the Asarco lead refinery in Omaha which is the principal source of lead in the area. EPA withheld approval of the control measures in the January 31, 1985, **Federal Register** because the measures were not sufficiently described and were therefore considered unenforceable. The state of Nebraska agreed to provide additional details concerning the control measures so EPA could proceed with final rulemaking on that one remaining portion of the Omaha lead SIP.

Before the state developed the information concerning the control measures, a revised demonstration of attainment dated January 18, 1985, was prepared by Asarco and submitted to the state. Asarco contended that the original control strategy was overly stringent because it was developed using diffusion modeling, which overpredicted the ambient lead levels in the vicinity of the Asarco lead refinery. One year of lead monitoring data from a newly established station near the point of predicted maximum concentration gave considerably lower lead levels than those predicted by the original modeling. Using monitored lead data, Asarco attempted to calibrate the dispersion model by developing a correction factor which was applied to all modeled lead concentrations to reduce their value. Because of the limited amount of ambient lead data which were available, EPA did not accept the revised control strategy based upon the use of calibrated modeling.

A revised control strategy dated August 14, 1985, was developed by Asarco, submitted to the State, and adopted after public hearing by the Nebraska Environmental Control Council on September 27, 1985. The August 14 revision to the control strategy was based upon dispersion modeling adjusted to predict lower lead concentrations which supposedly more nearly correlated with the measured lead levels in the area. The adjustments in the modeling involved changes in source input data which Asarco and the State of Nebraska believed more nearly described the emission plume behavior from the sources than that which was used in the original modeling. This revised control strategy was submitted to EPA in October 1985 as a SIP revision.

EPA did not agree with all of the adjustments in the SIP submittal. Two items were of particular concern to EPA. One involved the use of plume enhancement for stacks located in the vicinity of one another. Asarco contended that the plume from such stacks should be modeled as though all the stack gases were being emitted from one stack even though in some cases, the stacks were nearly 35 feet apart. By theoretically representing all stack gases emanating from one stack, the model calculates a greater plume rise and thus, a lower ground level lead concentration than if modeled using individual stacks. EPA determined that the combined plume representation gave too much plume enhancement for adjacent stacks and that no enhancement credit could be claimed unless on-site verification of plume enhancement was performed.

Another item of disagreement involved the height of the plume origin for fugitive lead emissions from certain buildings at the Asarco refinery. Asarco and the State of Nebraska argued that the height should be the top of the building because the heat-generating sources in the building caused the hot gases to rise to the top of the buildings where they were emitted. EPA contended that some of the emissions would be emitted from the sides of the building, and even those that were emitted from the building top would be diffused in the building wake which

would place the plume origin near building mid-height.

There were other items involving model input on which EPA disagreed with the August 14, 1985, revision. The impact of these items on predicted ground level lead concentrations near the lead refinery was found to be negligible and, therefore, they were not pursued further.

In March 1986, EPA, the Nebraska Department of Environmental Control (NDEC), and Asarco representatives met to determine a course of action for resolving the issues concerning the control strategy. It was agreed that an on-site evaluation of the plume release height from the process buildings would be conducted by Asarco and observed by NDEC. It was also agreed that EPA would provide the requirements for an on-site study to determine whether the actual plume rise from adjacent stacks was appreciably greater than the height obtained by modeling each stack individually. These requirements were transmitted to NDEC and Asarco on March 27, 1986.

The building plume tests were conducted and observed by NDEC. The state determined that the tests showed the majority of the process fugitive emissions were emitted from the top of buildings. EPA believes that the State's determination on this matter is justified. Asarco determined they would not conduct on-site studies on plume rise from the stacks, but would model them individually and treat the plume rise as if there were no interaction of stack gases.

Other disagreements in model input between EPA and Asarco were resolved through subsequent correspondence, and all parties agreed on a base case model to be used for strategy development and evaluation. The base case model was used to develop a demonstration of attainment for all receptor points in the vicinity of the lead refinery. A number of control measures were developed or identified and the emission inventory was appropriately reduced. Using the projected inventory, the model predicted that the National Ambient Air Quality Standards for lead will be met at all receptors in Omaha where the model is capable of calculating ambient concentrations. The control strategy for attainment of the lead standard is composed of control measures contained in the Administrative Order issued to Asarco by NDEC on November 12, 1986, and includes the following items:

1. One control measure requires that dust collected in certain baghouse cellars at the plant be removed by a vacuum truck. Formerly, the dust was removed using front-end loaders, which allowed a great deal of material to become airborne during transfer of the dust to the vehicles which transported the material to the residue storage area. The operational practices for use of the vacuum truck are described in detail in work practice manuals which Nebraska intends to incorporate as enforceable requirements of the Omaha lead SIP.

2. Fugitive emissions are or will be reduced in the refinery building through the use of improved hooding with increased airflow, and by process changes which maintain materials in liquid rather than solid state or reduce the temperature and thus reduce the vaporization of molten lead.

3. Improved dampers on the retort furnaces reduce leakage by approximately 40 percent and thus supply additional ventilation air to the hoods over the retort when they are being "pulled" or emptied, which is the period when emissions are highest.

4. The reverberatory furnace in the smelter building will be controlled by installing additional local exhaust hooding over the charging and slag cooling operations supplied with additional draft air. The furnace will also be equipped with an automatic damper to prevent overpressures inside of the furnace which cause excess lead emissions for the furnace.

5. Fugitive emissions from elevators, storage hoppers, product sacking machine, and other sources in the antimony oxide building will be controlled with new baghouses which increase building ventilation by 158 percent.

6. The emission inventory presently includes emissions from stockpiles, unpaved areas, and plant traffic. These emissions will be reduced by paving additional plant area and vacuum sweeping all paved areas of the plant. The plant also has purchased a spray truck to apply chemical dust suppressants to piles of slag, dross and refractory brick, and to other unpaved plant areas. The use of the vacuum truck and the spray truck are governed by a detailed work practice manual.

7. In addition to all other control measures, the plant will be required to curtail production by 10 percent.

There are no lead emission control regulations in the Nebraska lead SIP. The NDEC has issued an Administrative Order which requires the installation of the emission control equipment and the implementation of control practices which are identified in the plan as necessary to show attainment and maintenance of the lead standard in Omaha.

The NDEC previously issued an Administrative Order dated June 12, 1984, to Asarco as part of the original control strategy for the Omaha area. EPA approved the order in the January 31, 1985, Federal Register. A revision to the demonstration of attainment was drafted by the state of Nebraska in January 1985. The previous order was withdrawn at that time because it did not contain the same control measures as those in the revised attainment demonstration. On August 22, 1985, another order was issued to Asarco which required them to install certain controls and to implement procedures which the State determined were adequate to meet the air quality standards for lead. These measures were required to be installed and in compliance by February 1, 1988, or three years after EPA's initial partial approval of the Omaha lead SIP. The August 22, 1985, order was amended by an order dated May 9, 1986. Among other things, the amendments suspended portions of the August 22, 1985 order, pending the outcome of negotiations between NDEC, Asarco, and EPA concerning acceptance of the dispersion modeling for the attainment demonstration.

A second amended Administrative Order dated November 12, 1986, was issued to Asarco by NDEC and was approved by the Nebraska Enviromental Control Council as part of the Omaha lead SIP. The order amends the May 9, 1986, order and incorporates all the control measures necessary to reach attainment of the lead standard in Omaha. The order requires implementation of all control measures by the attainment date established in the January 31, 1985 rulemaking, which is February 1, 1988. The order also identifies certain recordkeeping provisions which are considered necessary to insure continued compliance with the requirements of the order. If approved, NDEC intends that the order be submitted to EPA as an enforceable portion of the Nebraska lead SIP. The order provides for continued operation and monitoring of all existing control equipment, and the continuation of all emission control practices which were included as a part of the approved control strategy. If there are major changes in control equipment at the plant or major changes in emission control practices, such changes must be submitted and approved as SIP revisions.

Action

EPA has reviewed the draft SIP submitted by the State of Nebraska concerning the revised demonstration of

attainment and control measures for the Omaha lead SIP contained in the Administrative Order dated November 12, 1986. Based on this review, EPA proposes to approve the Nebraska lead SIP for Omaha as meeting the requirements of 40 CFR 51.111, Description of Control Measures (formerly 40 CFR 51.87, Control Measures) and 40 CFR 51.112, Demonstration of Adequacy (formerly 40 CFR 51.80, Demonstration of Attainment). This action also proposes to approve the Administrative Complaint and Order No. 753 dated August 22, 1985, as amended by amended Administrative Order No. 753 dated May 9, 1986, and by second amended Administrative Order No. 753 dated November 12, 1986.

All other portions of the Omaha lead SIP have already been approved.

This action is being proposed under the "parallel processing" procedure (47 FR 27073). If the demonstration of attainment and control measures which the State of Nebraska submits in final form differ substantially from the material already submitted, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking.

The Administrator's final decision to approve the Omaha demonstration of attainment and control measures for the Nebraska lead SIP will be based on whether it meets the requirements of section 110 of the Clean Air Act, as amended, EPA regulations in 40 CFR Part 51, and comments received in response to today's proposal.

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have significant economic impact on a substantial number of small entities (46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: December 4, 1986.

Morris Kay,

Regional Administrator.

[FR Doc. 87–3837 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–6–FRL–3161–3]

Proposed Federal Assistance; Limitations; State of New Mexico; Air Quality Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On March 4, 1985, the Environmental Protection Agency (EPA) disapporved the vehicle inspection and maintenance (I/M) portion of the 1982 State Implementation Plan (SIP) for controlling carbon monoxide (CO) in Bernalillo County, New Mexico. The EPA also finalized actions to limit certain federal funding assistance and prohibited the construction or modification of major stationary sources of CO in Bernalillo County. On September 4, 1984, EPA proposed the above disapproval and requested comments on the appropriateness of witholding Federal construction grant funds for sewage treatment facilities under section 316(b) of the Clean Air Act (CAA). After consideration of all comments, the EPA believes that it is appropriate to propose section 316(b) sactions at this time, as reasonable efforts have not been made to reestablish the I/M program in Bernalillo County. EPA invites public comment on this action.

If EPA imposes 316(b) funding restrictions EPA proposes that the restrictions be removed when either of the following conditions are met:

(a) The State submits evidence that it has taken concrete steps toward restarting its I/M program in an expeditious manner, including the submittal of adequate legal authority and institution of an adequate funding mechanism, or

(b) The County is formally redesignated by EPA to attainment for CO.

DATE: Written comments must be submitted by March 27, 1987.

ADDRESSES: Written comments should be sent to Jack Divita, Chief, Air Programs Branch, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Copies of this notice are available for public inspection during normal business hours at the following locations:

Air Branch (6T–AS), Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270

Air Quality Bureau, Environmental Improvement Division, 1190 St. Francis, Harold Runnels Building, Santa Fe, New Mexico 87504–0968

Air Pollution Control Division, 924 Park SW., Albuquerque, New Mexico 87103

FOR FURTHER INFORMATION CONTACT: Carol Peters, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2742.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a) of the CAA, the State of New Mexico submitted a Part D SIP in January 1979, which demonstrated that the CO standard could not be attained by December 31, 1982, in Bernalillo County. (A Part D SIP is a SIP submitted by the State in order to meet the requirements of Part D of Title I of the Clean Air Act, as amended in 1977.) Consequently, New Mexico requested and received an extension for attainment of the CO standard in this area. The State was then required to submit a SIP revision in 1982 which would demonstrate attainment of the CO standard by December 31, 1987. The SIP was required to include an I/M program that met EPA's program specifications as outlined in the January 22, 1981 policy for extension area SIPs (47 FR 7181). The State of New Mexico submitted the 1982 SIP for attainment of the CO NAAQS in Bernalillo County on June 28, 1982. Subsequently, on July 1, 1983 (48 FR 30365), EPA approved the 1982 SIP for attainment of the CO NAAQS in Bernalillo County, including the provisions for an I/M program in Bernalillo County. The approved 1982 CO SIP for Bernalillo County contained City and County ordinances requiring all 1968 and newer gasoline powered light duty vehicles to participate in the program and provided for penalties for noncomplying vehicle owners. The SIP also contained the Albuquerque/Bernalillo County Air Quality Board Regulations governing the I/M program and the Albuquerque Traffic Code amendment pertaining to enforcement of the I/M ordinances.

B. I/M Program Disapproval

The I/M program in Bernalillo County began operation on January 3, 1983. However, on January 4, 1983 a citizen suit was filed in a New Mexico District Court challenging the I/M program on both statutory and constitutional grounds. The New Mexico Supreme Court issued a final ruling on the suit in March 1984 which included a finding that the City of Albuquerque/Bernalillo County did not have the authority to collect an inspection fee for the I/M test. The Supreme Court decision therefore

meant that the SIP revision was not legally adopted before submission to EPA and the revision did not meet the financial resource requirement of section 172.

Faced with the lack of authority to collect fees for funding the I/M program, the City officials revoked the ordinance governing the I/M program and closed the inspection facilities on March 28, 1984. The events relating to the Supreme Court ruling and the I/M program closure are discussed in detail in a Federal Register notice published on September 4, 1984 (49 FR 34866) which proposed disapproval and in the Federal Register notice published on March 4, 1985 (50 FR 8616) which finalized the disapproval of the I/M portion of the 1982 New Mexico CO SIP and imposed CAA limitations. The limitations imposed in the March 4 notice included federal funding restrictions under section 176(a) and a construction ban under section 110(a)(2)(I) of the CAA. The September 4, 1984, notice also requested public comment on the appropriateness of Federal limitations on sewage treatment grants as provided by section 316(b) of the CAA.

The SIP disapproval and limitations were proposed on the basis that the new 1982 CO SIP revision was not legally adopted before submission to EPA because the revision did not meet the financial resource requirement of section 172 of Part D of the Act. Further, as discussed in detail in the March 4, 1985 notice, in EPA's judgment, reasonable efforts were not being made to reestablish the I/M program and develop an approvable SIP as required by the Act. State challenges to EPA's rulemaking action were dismissed by the U.S. Court of Appeals for the Tenth Circuit in *New Mexico E.I.D.* v. *Thomas*, 789 F.2d 825, on April 23, 1986.

During the period of time since the EPA disapproved the I/M program and imposed funding limitations on CAA and highway grants, the City of Albuquerque has proposed several remedies to reinstate an I/M program. However, no I/M program has been reestablished to meet the EPA requirements.

C. Proposed Funding Restrictions

By this notice, EPA is proposing under section 316(b) of the CAA to withhold Federal assistance for the construction of sewage treatment facilities in Bernalillo County, New Mexico. EPA has discretionary authority under section 316(b) of the CAA, to withhold grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) to states, municipalities, and certain other governmental entities. The sewage treatment funding may be withheld if the State does not have in effect or is not carrying out an EPA approved SIP that expressly quantifies and that provides for the increase of each air pollutant that is reasonably anticipated to result either directly or indirectly from proposed new sewage treatment capacity [316(b)(2)]. Such capacity is described in an approved Clean Water Act section 201 facility plan funded under a previous EPA planning grant (C35–1020–01). Sewage treatment funding may also be withheld in areas where construction of the proposed treatment works will create new sewage treatment capacity that may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any pollutant in excess of the increase provided for under the SIP [316(b)(3)(A)]. On November 2, 1983, EPA announced its policy on imposing section 316(b) sanctions, along with policy statements on other sanctions and issues (48 FR 50686). This policy indicated that EPA may propose to add section 316(b) restrictions in areas where further inducement to action is needed.

Bernalillo County is a nonattainment area without an approved SIP, and the existing SIP does not provide for the increased emissions which would "result" from new wastewater treatment capacity. Further, the Agency feels it is inappropriate to fund sewage treatment projects which may reasonably be anticipated to contribute to growth and associated air quality problems. In this situation, EPA, believes section 316(b) sanctions are appropriate.

As indicated, the EPA requested comments on the appropriateness of using CAA section 316(b) sanctions against Bernalillo County in the Federal Register on September 4, 1984. EPA received comments on the appropriateness of using this sanction during the comment period for the September 4, 1984, proposal and at the public hearing on December 4, 1984, for the September 4, notice.

The majority of comments received indicated that EPA should impose sanctions and limit additional growth in the area because of the high air pollution levels in Bernalillo County. Some of these commenters also indicated that the section 316(b) limitations are necessary because additional incentives were needed to induce State and local action of the I/M program.

Several of the commenters including the City and State believed that section 316(b) sanctions should not be imposed, arguing primarily that sewage treatment construction projects proposed for the area are not for growth but to improve treatment capability. However, EPA has reviewed the list of projected Clean Water Act construction projects for Bernalillo County and finds that certain projects clearly will provide for increased wastewater treatment capacity.

A detailed description of all prior comments relating to section 316(b) and other proposals in the September 4, 1984, notice received and EPA's response are contained in the Technical Support Document available for public inspection in Docket Number NM–85–1. Based on broad cost estimates currently available to EPA, application of section 316(b) sanctions would result in a loss to the City of Albuquerque of up to $39,000,000 in grant funds.

D. Summary and Request for Comments

EPA will consider any future actions or commitments by the State before making a final determination on this proposal. If the State resumes an approvable I/M program prior to EPA taking final action on this matter, EPA will withdraw this proposal upon approving the revised CO SIP.

EPA is soliciting comments on the proposed imposition of section 316(b), sewage treatment works funding limitations in Bernalillo County. EPA will consider all comments received within 30 days of publication of this notice.

E. Miscellaneous

Under Executive Order 12291 this action is not "Major." It has been submitted to the Office of Management and Budget for review. EPA is soliciting further public comment on the imposition of funding limitations.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities with jurisdiction over populations of less than 50,000. EPA does not believe this funding limitation, if porposed, will have a significant affect upon a substantial number of small entities, but it could impact some located in Bernalillo County.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental Relations.

Authority: 42 U.S.C. 7401–7642.

Dated: February 12, 1987.

Frances E. Phillips,

Acting, Regional Administrator (6A).

[FR Doc. 87–3838 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–7–FRL–3160–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking (PRM).

SUMMARY: On March 27, 1986, the Kansas Department of Health and Environment submitted revised regulations pertaining to operating and construction permit fees. These regulations are K.A.R. 28–19–7, *Definitions;* K.A.R. 28–19–8, *Reporting required;* K.A.R. 28–19–9, *Time schedule for compliance;* and K.A.R. 28–19–14, *Permits required.* Also submitted was a revision to K.A.R. 28–19–31, *Emission limitations,* and K.A.R. 28–19–45, *Open burning prohibited.*

Today, EPA proposes to approve these revised rules and solicits public comment on this proposal.

DATES: Public comments should be received by April 27, 1987.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is available for public inspection during normal business hours at the above address and at the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(K) of the Clean Air Act, as amended, requires the owner or operator of each major source to pay the permitting authority, as a condition of any permit required under the Act, a fee sufficient to cover the reasonable costs of reviewing and acting upon any application for such permit. In order to provide for such permits, the State of Kansas revised certain of their rules pertaining to State-issued permits. A draft of these rules was submitted to EPA on September 28, 1983, for review and comment. These rules were subsequently adopted by the State after a public hearing on November 4, 1983. The notice and public hearing satisfied EPA's requirements for notice and public hearings at 40 CFR 51.4. Normally, newly-adopted Kansas regulations become permanent on May 1 of the year after adoption. In this case, these rules became permanent on May 1, 1984. However, State regulations 28–19–7, 28–19–8, 28–19–9, 28–19–14, 28–19–31, and 28–19–45 were not submitted as part of the revised Kansas State Implementation Plan (SIP). The reason offered by the State is that there was a rapid turnover of air program staff which allowed submittal of these revisions to be overlooked.

These regulations were subsequently revised by the KDHE after notice and a public hearing on November 22, 1985. While the public hearing satisfies part of the EPA's requirements, the notice allowed 15 days' advance notice of the hearing, and the hearing record was held open for five days after the hearing. The notice satisfies the State's requirements, but does not satisfy the 30-day period for public comment at 40 CFR 51.4(b). Because these rules were previously subject to hearings subject to the § 51.4 requirements, and the revisions adopted were minor in nature, EPA believes the public hearing requirements have substantially been met. However, EPA believes that an additional 30 days for public comments on this proposed rulemaking is appropriate.

K.A.R. 28–19–7, *Definitions,* is currently a part of the approved SIP. The rule submitted by the KDHE contains minor wording changes made for the purpose of clarity and to be consistent with terms used in the permit fee regulations in K.A.R. 28–19–14. Definitions in 28–19–7 include the terms alter, control device, department, existing, opacity, and the like.

K.A.R. 28–19–8, *Reporting required,* identifies sources of pollutant emissions which must report such emissions to the KDHE. This rule applies to proposed construction, alteration, or operation of a source type as identified in the regulation. Sources of emissions which must report are as follows: (1) One pound per hour or greater of particulate matter; (2) two pounds per hour or more of sulfur oxides; (3) 50 pounds or more of nitrogen oxides in any 24-hour period; (4) 50 pounds or more of carbon monoxide in any 24-hour period; (5) 50 pounds or more of volatile organic compounds in any 24-hour period; (6) any measurable quantity of lead; (7) incinerator emissions except for residential use; and (8) any other air contaminant emission that the KDHE determines may cause or contribute to air pollution in the State of Kansas. This rule provides wide latitude for the State to obtain emissions data. Construction is prohibited until KDHE determines a permit is not needed or KDHE issues a permit under 28–19–14, *Permits required.*

K.A.R. 28–19–9, *Time schedule for compliance,* is currently a part of the applicable SIP for Kansas. This rule requires that new or altered sources be in compliance with applicable emission limits prior to start-up, but allows the State to extend a final compliance date. The revision submitted by the KDHE removes an exemption that allowed sources under construction prior to January 1, 1971, to operate without an operating permit. The operating permit portion of the regulation is not part of the Kansas SIP. However, the portion of the regulation which requires previously exempt sources to pay a fee to obtain an operating permit is proposed to be approved.

K.A.R. 28–19–14, *Permits required,* subjects all sources of criteria pollutants at or above a minimum emission limit to the requirement that they obtain a permit to construct, alter, or operate. Sources of 10 tons per year or more of particulate matter, sulfur oxides, carbon monoxide, and volatile organic compounds must obtain construction or operating permits. Nitrogen oxide sources with a potential to emit 50 tons or more per year must obtain a permit to construct, alter, or operate. A lead source of any amount of emissions must obtain a permit to construct, alter, and/or operate. Sources of any emissions required to report under provisions of 28–19–8 must also obtain a permit to construct, alter, and/or operate.

K.A.R. 28–19–14a establishes a permit fee cost for new and existing sources. Permit fees must accompany an application if the application is to be processed. This regulation establishes minimum and maximum fees. K.A.R. 28–19–14b identifies the source types subject to the permit fee. Certain sources are exempted from the fee, but all sources must obtain permits.

EPA believes these rules satsify the intent of section 110(a)(2)(K) of the Clean Air Act and are consistent with the EPA Fee Guideline document EPA–450/2–81–003, September 1981.

K.A.R. 28–19–31, *Emission limitations,* concerns emissions limits for indirect-fired heating equipment with respect to total suspended particulate matter (TSP), sulfur, and nitrogen oxides. This rule is currently part of the approved Kansas SIP. The State's submittal contains minor wording changes intended to provide clarity. The revisions do not strengthen or relax the rule in the applicable SIP.

K.A.R. 28–19–45, *Open burning prohibited,* is part of the applicable SIP. The State's submittal contains minor

wording revisions which do not affect the rule's stringency. This rule prohibits open burning of waste, salvage by open burning, and open burning of structures.

Proposed Action

EPA proposes to approve K.A.R. 28–19–7, *Definitions;* K.A.R. 28–19–8, *Reporting required;* K.A.R. 28–19–9, *Time schedule for compliance;* K.A.R. 28–19–14, *Permits required;* K.A.R. 28–19–14a, *Construction or alteration permit fees;* K.A.R. 28–19–14b, *Operating permit fees;* and K.A.R. 28–19–31, *Emission limitations;* and K.A.R. 28–19–45, *Open burning prohibited.* EPA solicits public comments on this proposed rule.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: July 25, 1986.

Morris Kay,

Regional Administrator.

Note—This document was received at the Office of the Federal Register on February 19, 1987.

[FR Doc. 87–3833 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–7–FRL–3160–6]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On March 27, 1986, the Kansas Department of Health and Environment (KDHE) submitted revised regulations pertaining to construction permits for sources to be located in nonattainment areas and attainment areas. K.A.R. 28–19–16, *New source permit requirements for designated nonattainment areas; and K.A.R. 28–19–17, New source permit requirements for designated attainment and unclassified areas,* were adopted by the State after a public hearing on November 22, 1985.

Today, EPA proposes to approve these revised rules.

DATES: Public comments should be received by April 27, 1987.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submission is available for public inspection during normal business hours at the above address and at the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: The KDHE adopted K.A.R. 28–19–16 through 28–19–16m to satisfy the preconstruction review requirements of section 172(b)(6) of the Clean Air Act, as amended. EPA approved these regulations as part of the applicable State Implementation Plan (SIP) on October 22, 1981 (46 FR 51743). The KDHE adopted revisions to K.A.R. 28–19–16, 28–19–16b, 28–19–16d, 28–19–16g, 28–19–16i, and 28–19–16l after a public hearing on November 22, 1985. These regulations are applicable in nonattainment areas of the State.

K.A.R. 28–19–16 identifies the applicability of these regulations. K.A.R. 28–19–16b has been revised to delete the time limit required for KDHE to act on a permit application. Other changes in 28–19–16b have been made for clarity and style. K.A.R. 28–19–16d contains minor revisions which do not materially affect its stringency. This rule remains consistent with 40 CFR 51.165(a) (§ 51.18(j)(4)).

K.A.R. 28–19–16g prohibits issuance of permits in nonattainment areas if emissions from such sources would prevent attainment or maintenance of a national ambient air quality standard. This rule further requires that the application demonstrate reasonable further progress toward attainment of an applicable air quality standard. The revisions adopted by the state are minor wording changes which do not affect the stringency of the regulation. This rule remains consistent with section 173 of the Clean Air Act, as amended.

K.A.R. 28–19–16i requires a new or modified source to operate within the requirements of its permit. The revisions adopted by the KDHE are minor wording changes which do not affect its stringency.

K.A.R. 28–19–16l states that each permit shall become void if construction is not commenced within 18 months or if construction is discontinued for 18 months or more. The wording changes adopted by the State do not affect the stringency of the regulation. This regulation is consistent with the requirements of 40 CFR 52.21(i)(4).

The Kansas regulations which govern permits to construct or modify emission sources in attainment or unclassified areas are contained in K.A.R. 28–19–17 through 28–19–17l. These rules represent the state's prevention of significant deterioriation (PSD) regulations. These rules were approved, with certain exceptions, as part of the applicable Kansas SIP on December 11, 1984 (49 FR 48185).

The December 11, 1984, rulemaking disapproved K.A.R. 28–19–17l affecting the use of innovative control of technology because it did not provide for consultation with governors of affected adjacent States. The revisions submitted by the KDHE delete K.A.R. 28–19–17l; thus, those seeking to use innovative control technology in Kansas would continue to seek permits from EPA. The effect of the State regulatory change is to recognize the requirements of the SIP as approved by EPA in the December 11, 1984, rulemaking.

In the rulemaking at 49 FR 48186 (December 11, 1984), EPA retained the 40 CFR 52.21(h) good engineering practice (GEP) stack height authority promulgated as part of the Kansas SIP at 40 CFR 52.884 until such time that the State adopts acceptable stack height regulations. The rationale was that the Kansas general stack height regulations at K.A.R. 28–19–18 et seq. contained exemptions inconsistent with the EPA stack height requirement in the PSD regulations at 40 CFR 52.21(h). EPA took no action on the Kansas stack height regulations in the December 11, 1984, rulemaking. That rulemaking delayed action on the Kansas stack height regulations until EPA revised its general stack height regulation as required by Sierra Club and NRDC v. EPA, 719 F 2d 436 (D.C. Cir., 1983).

EPA's revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). Pursuant to the requirements of the Act, the State revised its stack height regulations to be consistent with EPA's revised stack height regulations. The State also performed the required stack analysis to determine whether emission limitations had been set using stack heights or any other dispersion techniques. This revision was submitted to EPA as a SIP revision on March 27, 1986. The Kansas stack height rules at K.A.R. 28–19–18 et. seq. will be addressed in a separate proposed rulemaking in the **Federal Register** at a later date.

Because a GEP stack height analysis is an integral part of the PSD permitting

process, EPA will delay final action on the revised Kansas PSD rules until the State's stack height rules are approved.

The revised Kansas PSD regulations submitted by the KDHE are contained in K.A.R. 28–19–17, 28–19–17a, and 28–19–17b. These revised PSD regulations were submitted to EPA on March 27, 1986. The intent of the revisions was to correct the deficiencies cited in the December 11, 1984, rulemaking (49 FR 48185) insofar as possible. The deficiency which relates to vessel activities will be corrected after EPA revises the definition of "building, structure, facility, or installation" to satisfy the Circuit Court decision cited in that rulemaking.

EPA's review of the Kansas PSD regulations revisions finds a deficiency still remains in K.A.R. 28–19–17(c). This subsection is deficient in that it does not clearly prevent the use of decreases in netting calculations previously relied upon by EPA for PSD permits. The KDHE has since submitted a draft revision which EPA believes should correct this deficiency when adopted and submitted as a final rule. The State intends to submit the correction in early 1987. In the interim, EPA believes that the existing rule can be interpreted in a manner which allows the State to disregard emission decreases relied upon by EPA in the issuance of PSD permits.

K.A.R. 28–19–17a, *Definitions,* is revised to correctly attribute the PSD area classifications (Class I, Class II, and Class III) to the Clean Air Act, as amended. This regulation is approvable.

K.A.R. 28–19–17b, *Permit required,* contains minor wording changes which do not affect the rule's stringency. However, the time required for action on permit applications is deleted. Thus, the State has sufficient time to review applications and de factor permits cannot be obtained merely because the State has failed to act within a specified time.

The State's revised new source rules for nonattainment areas and attainment or unclassified areas were adopted after a public hearing held on November 22, 1985. Included with the submittal is a hearing officer's report and an annoucement that was published in the *Kansas Register.* The public hearing satisfied part of the requirements in 40 CFR 51.102; however, the record shows that only 15 days' advance public notice was provided and that the hearing record was held open for an additional 5 days. Thus, only 20 days were available for public comment.

The new source review rules for nonattainment areas (K.A.R. 28–19–16 et seq.) that EPA approved on October 22, 1981 (46 FR 51743) were adopted after adequate notice and public hearing. The revisions adopted by the State after the November 22, 1985, hearing are primarily minor wording changes made after clarification and style. Additionally, these rules were subjected to review by the State legislative review committee. For these reasons, EPA believes the public notification and hearing requirements have substantially been met. A similar situation exists regarding the Kansas PSD regulation revisions.

In the case of the PSD revisions, the State was attempting to correct deficiencies identified in EPA's rulemaking of December 11, 1984. Thus the State had limited discretion in the changes which could be made during the public participation process. For these reasons, EPA believes the public notice requirements of 40 CFR 51.102 requiring that the State give 30 days' notice were substantially met.

Proposed Action

EPA proposes to approve the revisions to K.A.R. 28–19–16, 28–19–16b, 28–19–16d, 28–19–16g, 28–19–16l, and 28–19–161 as they apply to new source review in nonattainment areas.

EPA proposes to approve the State's revisions to K.A.R. 28–19–17 et seq. except as noted below.

For the reasons stated above, final action on these revisions will be delayed until final action is taken on the revised Kansas stack height regulations.

EPA proposes to disapprove the revision in K.A.R. 28–19–17(c) which defines Administrator to mean either the Administrator of EPA or Secretary of the Kansas Department of Health and Environment.

EPA proposes to approve the revisions in K.A.R. 28–19–17a.

EPA proposes to approve the revisions in K.A.R. 28–19–17b.

EPA is soliciting comments on the State's submission and on the proposed approval of these regulations as a revision to the Kansas SIP. The Administrator's decision to approve or disapprove this submission will be based upon the comments received and on whether the SIP revisions meet the requirements of the Clean Air Act, as amended, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: August 28, 1986.

Morris Kay,

Regional Administrator.

Note.—This document was received at the Office of the **Federal Register** on February 19, 1987.

[FR Doc. 87–3834 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[A–5–FRL–3160–3]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On December 6, 1985, the State of Ohio requested that Franklin County be redesignated from nonattainment to attainment for the Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS). Additional technical support was submitted by the State on March 4, 1986.

Additionally, on November 20, 1985, the State of Ohio requested that Hamilton County be redesignated from nonattainment to attainment for the CO NAAQS. Supplemental technical information was submitted by the State on March 4, 1986, and March 19, 1986. USEPA has reviewed this technical information and determined that it satisfies USEPA's redesignation policy. Therefore USEPA proposes to approve the redesignation requests for Franklin and Hamilton Counties for CO.

DATE: Comments on this redesignation request and on the proposed USEPA action must be received by March 27, 1987.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361

East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (Act), the Administrator of USEPA has promulgated the NAAQS attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 40 CFR Part 81. These area designations may be revised whenever the data warrant.

The primary NAAQS for CO is violated if, more than once in a calendar year, maximum CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 9 parts per million (9 ppm), (35 ppm), or (2) the maximum allowable 1-hour concentration of 35 ppm.

USEPA's criteria for a supportable redesignation request, as they pertain to CO, are discussed in the following USEPA memoranda:

1. June 12, 1979, from Richard G. Rhoads to the Director of Air and Hazardous Materials Divisions, Regions I–X, Subject; "Section 107 Redesignation Criteria."
2. April 21, 1983, from Sheldon Meyers to Directors of Air Management Divisions, Region I–X, Subject: "Section 107 Designation Summary Policy."
3. December 23, 1983, from G.T. Helms to Chiefs of Air Programs Branches, Regions I–X, Subject: "Section 107 Questions and Answers."

The USPA policy relevant to CO redesignations is summarized as follows:

1. The most recent 2 years (8 consecutive quarters) of quality assured, representative air quality data are to be considered for each monitoring site.
2. Evidence must be provided to show that a control strategy fully approved by USEPA has been implemented. The monitored air quality improvement must be related to the emissions impacts of the implemented control strategy.
3. Supplemental data, such as air quality modeling data, emissions data, etc., should be used to determine whether or not the monitoring data characterize the worst-case air quality in the air.
4. An entire urban core area should be designated as nonattainment if standard violations or the potential for such standard violations exist in the core area.

Franklin County (Columbus)

On March 3, 1978 (43 FR 9026), USEPA designated all of Franklin County (Columbus) as nonattainment for CO. On December 6, 1985, the State of Ohio submitted redesignation request to USEPA requesting that Franklin County be redesignated from nonattainment to attainment for CO. Additional technical support was submitted by the State on March 4, 1986.

Air Quality Data

According to the State submittal, CO was monitored at three sites in Franklin County during the period January 1982 through September 1985. The three sites are: 1313 Chesapeake (Columbus); 1585 Morse Road; and 280 E. Broad Street (Columbus). None of these sites has recorded a CO Standard violation since 1982. Two of the three monitoring sites in Franklin County are in areas where relatively high CO concentrations might be expected. One monitor, which is located at 280 East Broad Street, is in the Central Business District (CBD) of Columbus. The high traffic density in the CBD coupled with low vehicle speeds in this area should produce relatively high CO concentrations locally. The intersection nearest the monitor carries an average daily traffic (ADT) level of approximately 30,000 vehicles, with the majority of the traffic being on Broad Street immediately in front of the monitor. Because the annual second-high CO concentrations at the 280 East Broad Street site have been well below the 8-hour standard since 1982 and because Broad Street is one of the heaviest travelled streets in the CBD, it has been determined that one of the intersections in the CBD are likely to experience violations of the CO NAAQS.

The second monitor of possible concern is located at 1585 Morse Road, which is located outside of the CBD. The nearest intersection to this site carriers a high ADT of 59,000 vehicles per day, with vehicle speeds between 35 and 40 miles per hour. This site has not had monitored violations of the CO NAAQS in the last 3 years despite its location near a high traffic area.

SIP Attainment Demonstration

The State of Ohio's 1979 SIP noted that the 1975 Franklin County CO emission total was estimated to be 266.735 tons/year. The SIP committed to reduce this total to 211,788 tons/year by the end of the 1982 as the result of the Federal Motor Vehicle Emissions Control Program (FMVECP) and the implementation of Transportation Control Measures (TCMs). The March 4, 1985, submittal contains estimates of 1984 CO emissions and an updated Reasonable Further Progress (RFP) report. The supplemental submittal shows that the SIP emission reduction committment was actually exceeded. The actual Franklin County CO emissions for 1982 were estimated to be 150,347 tons/year. Additional TCM based CO emission reductions occurred in 1985.

The March 4, 1986, submittal lists the TCMs that were implemented after 1979 and the CO emission reduction achieved from each measure. These TCMs were: Mass transit improvements; ridesharing programs; signalization improvements; and roadway/traffic flow improvements. Between 1980 and 1982, TCM's achieved an estimated CO emission reduction of 7,031 tons/year. An additional estimated CO emission reduction of 3,982 tons/year was achieved between 1982 and the end of 1985. The observed air quality improvements can be explained to be the result of the implemented TCM's and the FMVECP. Since the TCM's and the FMVECP will continue to reduce CO emissions in the future and a substantial growth margin (i.e., emission reductions in excess of that minimally necessary to assure attainment of the NAAQS) in county CO emissions has occurred, it is expected that the attainment of the CO NAAQS will be maintained at the monitoring sites.

Conclusion

USEPA has reviewed both the December 6, 1985, and March 4, 1986, submittals, and has determined that the monitored improvement in CO concentrations to below-standard levels can be explained in terms of permanent, enforceable control measures. In addition, USEPA has concluded that the peak monitored CO concentrations are representative of the worst-case concentrations in Franklin County. Because, there are no violations of the 8-hour and 1-hour standard which have been monitored in the most recent 2 years for each site and the SIP has been implemented, USEPA has determined that a redesignation of Franklin County, Ohio to attainment for CO is acceptable. Therefore, USEPA proposes approval of the redesignation of Franklin County to attainment for CO.

Hamilton County (Cincinnati)

On March 3, 1978 (43 FR 9026), USEPA designated Hamilton County (Cincinnati) as nonattainment for CO. On November 20, 1985, the State of Ohio submitted a redesignation request to USEPA requesting that Hamilton County be redesignated from nonattainment to attainment for CO. Additional technical support was submitted by the State on March 4, 1986, and March 19, 1986.

Air Quality Data

According to the State submittal, CO was monitored at five sites in Hamilton during the period of January 1982 through August 1985. These sites are: 1675 Gest Street (1982 data only) (sites are in Cincinnati unless otherwise noted); Fifth and Walnut; Vine and St. Clair; 6950 Ripple Road; and 3001 Harris in Norwood. The 1982 CO SIP revision noted that of the five CO monitors operating during the 1979–1981 period (the base period of the SIP revision), only one monitor, located at the intersection of Vine and St. Clair, recorded a violation of the CO NAAQS with two monitored 8–hour exceedances (11.1 ppm and 9.6 ppm). The State determined after analyzing the emissions in the vicinity of the monitor, that the monitored concentrations at this site were reflective of the impacts of mobile source CO emissions from two relatively small traffic zones surrounding the monitor. In particular, the SIP noted that traffic levels are high along both Vine and St. Clair Avenues.

The Cincinnati CO SIP revision and the November 20, 1985, redesignation request do not address the representativeness of the monitoring sites in terms of monitoring the worst-case CO concentrations that may actually have occurred in Hamilton County. USEPA requested supplemental ADT data. These data were submitted by the State on March 19, 1986.

The Vine and St. Clair monitor is located adjacent to St. Clair Avenue, which has an ADT of 23,000 vehicles per day, and 91 meters east (generally downwind of the monitor) Vine Street which has an ADT of 28,000 vehicles per day. Both roadways have low to moderate vehicle speeds of 30 miles per hour or less (low vehicle speeds result in higher per vehicle CO emission rates). The 51,000 vehicles per day passing along Vine Street or St. Clair Avenue are the likely source of the pre-1982 CO standard exceedances monitored at this site. No exceedances of the standard have been recorded at this site since 1982.

The Fifth and Walnut monitor is located near the center of the CBD of Cincinnati. Although each roadway carries a lower ADT (approximately 10,000) in the CBD, the area density ADT is relatively high in the tighter grid of streets to be found in the CBD. This grid extends from 2nd Street on the south to 10th Street on the north and from Central Avenue on the west to Boardway on the east. All streets in this CBD grid carry approximately 10,000 ADT or more. Vehicle speeds in this area are low, 25 miles per hour or less, resulting in high per vehicle emission rates. In addition, in excess of 70,000 ADT pass along I–71 on the CBD's southern and eastern edges and in excess of 70,000 ADT pass along I–75 near the CBD's western edge. All of these factors have the potential of producing relatively high CO concentrations in the CBD. No exceedances of the standard have been monitored at this site since 1982.

With the exception of the Western Hills Viaduct/Beekman Avenue intersection, all other intersections with ADTs equal to or greater than the ADT at Vine/St. Clair are located significantly farther from downtown Cincinnati than the Vine/St. Clair intersection. These intersections may have higher average vehicle speeds than the Vine/St. Clair intersection and, thus, lower CO emission rates and lower CO concentrations. In addition, these intersections should have lower background CO concentrations due to lower area densities of vehicles.

The only other intersection of concern in this analysis is the intersection of Western Hills Viaduct and Beekman Avenue. This intersection has an ADT very similar to that of Vine and St. Clair. It has a relatively similar location to downtown Cincinnati. Lacking other data, USEPA has concluded that it has CO concentrations similar to those at Vine and St. Clair, and is, therefore, currently below the standard.

SIP Attainment Demonstration

Although the redesignation request itself contains no documentation demonstrating that the monitored attainment of the CO standard is due to implementation of permanent, enforceable control measures, USEPA has recently completed final rulemaking (49 FR 6724) approving a 1982 Cincinnati CO SIP revision which does document the impact of such control measure implementation.

The demonstration of attainment contained in the SIP was based entirely on the projected impact of the FMVECP and demonstrated attainment of the CO NAAQS by December 31, 1982. The SIP revision notes that other TCMs, such as the installation of metered parking and enhanced bus services will be implemented in the vicinity of the worst-case monitor. The SIP, however, does not address the emission impact of these additional control measures. These measures would act to further increase the demonstrated margin of attainment.

The approved demonstration of attainment is verified by the air quality data. Because, the demonstration of attainment was based entirely on the projected impacts of the FMVECP and this control program has been implemented and continues to be implemented, it is concluded that the observed air quality improvement can be explained in terms of the SIP's attainment demonstrated control program. The post-1982 implementation of additional TCM's as well as the continued implementation of the FMVECP should act to maintain attainment of the CO NAAQS at the monitoring sites.

Conclusion

USEPA has concluded that the monitored improvements in CO concentrations to below-standard levels in Hamilton County can be explained in terms of permanent, enforceable control measures. USEPA has also concluded that the peak monitored concentrations are reasonably representative of the worst-case concentrations in the Cincinnati area. Since no violations of the standard have been monitored in the most recent 2 years of data for each site, USEPA has determined that a redesignation of Hamilton County, Ohio to attainment for CO is acceptable. Therefore, USEPA proposes approval of the redesignation of Hamilton County to attainment for CO.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: September 30, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–3839 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 21]

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

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a technical amendment which, in effect, would permit aiming pad configurations specified for sealed beam headlamps with circular lenses to be used on replaceable bulb headlamps. The notice implements the grant of a rulemaking petition filed by BMW of North America, Inc.

DATES: Comment closing date for the proposal is April 13, 1987. Effective date of the amendment would be 30 days after publication of the final rule in the Federal Register.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION: BMW of North America, Inc., has filed a petition for rulemaking to amend Motor Vehicle Safety Standard No. 108, to clarify that replaceable bulb headlamp systems may incorporate aiming pad configurations identical to those required on sealed-beam headlamps with circular lenses. The petitioner wishes to introduce a replaceable bulb headlamp shortly with a circular lens whose diameter is equal to that of a 5¾ inch sealed beam headlamp. However, it is impossible for BMW's new headlamp to meet the aiming pad configurations specified by Figure 4 of Standard No. 108 for replaceable bulb headlamps, though it can meet those specified for sealed beam headlamps with a lens diameter of 5¾ inches. It therefore petitioned NHTSA for an alternative to Figure 4 which would allow replaceable bulb lamp lenses to "be designed so that the lamp may be inspected and aimed by mechanical aimers as specified in SAE J602 October 1980, without the removal of any ornamental trim rings or other parts."

In amending Standard No. 108 to allow use of replaceable bulb headlamps with the attendant styling freedom, NHTSA did not deem it likely that a manufacturer would wish to introduce such a lamp with a size identical to one of the four then permitted. Thus, the petitioner is correct in concluding that the apparent exclusion of replaceable bulb headlamp systems from sealed beam aiming pad location requirements was inadvertent. Therefore, NHTSA has granted BMW's petition. It is proposing an amendment of paragraph S4.1.1.36(a)(2) that would allow replaceable bulb headlamps the option incorporating aiming pads as specified for 7-inch, or 5¾-inch diameter sealed beam headlamps as specified in SAE Standard J571d, and that would require such headlamps to be designed so that they could be inspected and aimed by mechanical aimers as specified in SAE Standard J602. This is necessary because the universal adaptor used on other types of replaceable bulb headlamps are not designed for use on headlamps of the sizes covered by SAE J571d. The agency is considering the advisability of requiring headlamps on which the universal adaptor cannot be used to bear permanent identification of the type adaptor for which it is designed, and whether such an adaptor has been provided with the vehicle. The identification could be in the form of a label, or permanently marked upon the housing, but they would have to be visible as installed on the headlamp. The agency is also considering the advisability of placing this information in the operator's manual. NHTSA requests commenters on the proposed amendment to comment also on the necessity for the provision of information as discussed in this paragraph.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a regulatory evaluation is required. Since an amendment of the nature proposed would relieve a restriction, the proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in the design and use of headlighting systems. The price of new headlamps would not be affected.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal will have no effect upon the human environment since it would result in no change in the weight and quantity of materials used in the manufacture of headlamps. The agency has also considered this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected as there will be no impact on the price of new vehicles or headlamps.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR Part 512.)

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Because of the necessity of the petitioner to plan production, importation, and distribution on an orderly basis, it is tentatively found that an effective date earlier than 180 days after issuance of the final rule would be in the public interest. The engineer and lawyer primarily responsible for this proposal are Jere Medlin and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50 and 501.8

§ 571.108 [Amended]

2. In § 571.108, subparagraph (a)(2) of Paragraph S4.1.1.36 would be revised to read to read as follows:

S4.1.1.36

* * * * *

(a) * * *

(2) The exterior face of the lens of each replaceable bulb headlamp shall have three pads which meet the requirements of either Figure 4, *Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units*, or SAE Standard J571d *Dimensional Specifications for Sealed Beam Headlamp Units*, June 1976, as specified for a headlamp with a diameter of 5¾ inches or 7 inches. Except as provided in subparagraph (a)(3), a whole number which represents the distance in tenths of an inch (i.e., 0.3 inch=3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, shall be inscribed adjacent to each respective aiming pad on the lens of a headlamp whose pads meet the requirements of Figure 4. The height of these numbers shall not be less than .157 inch (4mm). If there is interference between the plane and the area of the lens between the aiming pads, the whole number will represent the distance to a secondary plane. The secondary plane shall be located parallel to the aiming reference plane and as close as possible to the lens without causing interference. A headlamp whose aiming pads meet the requirements specified in SAE J571d for a headlamp with a diameter of 5¾ inches or 7 inches shall be designed so that it may be inspected and aimed by a mechanical aimer as specified in SAE Standard J602c *Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units*, Dec. 1974, without the removal of any ornamental trim rings or other parts.

* * * * *

Issued on February 18, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–3846 Filed 2–24–87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) have submitted Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the amendment and any other documents made available.

DATE: Comments will be accepted until Saturday, April 18, 1987.

ADDRESSES: Comments should be sent to Craig R. O'Connor, Acting Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 1, the Environmental Assessment, and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699; and the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen (Regional Plan Coordinator), 813–893–3722.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP was prepared under the Magnuson Fishery Conservation and Management Act (Act). The Act also requires that the Secretary of Commerce (Secretary), upon receiving an FMP or amendment, must immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this Amendment.

This amendment proposes measures to prevent overfishing of the spiny and slipper lobster stocks in the exclusive economic zone in the Gulf of Mexico and South Atlantic, to rebuild and maintain the stock at a maximum sustainable yield level through protection of undersized lobsters, and provide for more consistent State and Federal management measures. On January 23, 1981 (46 FR 7433), the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for the FMP.

Proposed regulations for this amendment will be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: February 19, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3882 Filed 2–19–87; 4:24 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Meeting

ACTION: Committee on Rulemaking; Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The committee has scheduled this meeting to consider (a) the Administrative Conference study of OSHA rulemaking procedures and (b) future projects.

DATE: Friday, March 13, 1987, at 9:45 a.m.

Location: Library of the Administrative Conference, 2120 L Street, NW., Suite 500 Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: February 19, 1986.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87–3824 Filed 2–24–87; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Partial Funding Support for Collaborative International Agricultural Research; University of Georgia; Intent To Enter Cooperative Agreement

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Georgia to provide partial funding support for collaborative international agricultural research.

Authority: Sec. 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds during fiscal year 1987 (FY1987) to enter into a cooperative agreement with the University of Georgia to collaborate in international research on "Development and Strategies for Marketing Peanut-Based Spreads and Fermented Products." Funds would be available to the University of Georgia to conduct collaborative research with the University of the Philippines. Assitance will be provided only to the University of Georgia, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used for Research Assistants, supplies, travel and computer time. The University of the Philippines will support their portion of the research.

Based on the above, this is not a formal request for application. An estimated $20,000 will be available in FY1987 to support this work. It is anticipated that this cooperative research effort will be funded over a 36-month budget period, with total funding support in the amount of $43,200, subject to availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of International Cooperation and Development, U.S. Department of Agriculture (58–319R–7–013).

Dated: February 19, 1987.

Allen Wilder,

Contracting Officer.

[FR Doc. 87–3899 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–DP–M

Intent To Enter Cooperative Agreement; Partial Funding Support for Collaborative International Agricultural Research; University of Wyoming

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Wyoming to provide partial funding support for collaborative international agricultural research.

Authority: Sec. 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds during fiscal year 1987 (FY1987) to enter into a cooperative agreement with the University of Wyoming to collaborate in international research on "Identification of That Region in the Protoxin Genes of the Lepidopteran Killing *Bacillus thuringiensis* Subspecies Which Dictates Insect Host Range Specificity." Funds would be available to the University of Wyoming to conduct collaborative research with China's Shanghai Institute of Plant Physiology at the Academia Sinica. Assistance will be provided only to the University of Wyoming, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for a research associate. China's Academia Sinica will support their portion of the research.

Based on the above, this is not a formal request for application. An estimated $20,000 will be available in FY1987 to support this work. It is anticipated that this cooperative research effort will be funded over a 36-month budget period, with total funding support in the amount of $60,000, subject to availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of

International Cooperation and Development, U.S. Department of Agriculture, (58–319R–7–014).

Dated: February 19, 1987.

Allen Wilder,

Contracting Officer.

[FR Doc. 87–3898 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–DP–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs; Intent To Evaluate

AGENCY: National Ocean Service, Office of Ocean and Coastal Resource Management, NOAA, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Massachusetts Coastal Management Program (CMP); California CMP; Pennsylvania CMP; New Hampshire CMP; South Carolina CMP; Rhode Island CMP; Florida CMP; and Georgia's Sapelo Island National Estuarine Research Reserve; through June 30, 1987. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The review of the National Estuarine Research Reserve is conducted pursuant to section 315(f) of the CZMA, as amended by Pub. L. 99–272, which requires the Secretary of Commerce to evaluate periodically the operation and management of each Reserve, including education and interpretive activities, and the research being conducted within the reserve. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, State and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: February 17, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–3827 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–08–M

Red Drum Advisory Panel; Gulf of Mexico Fishery Management Council

AGENCY: National Marine Fisheries Servive, NOAA., Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Red Drum Advisory Panel, April 9, 1987, at the Landmark Motor Hotel, 2601 Severn Avenue, Metairie, LA, to review the amendment to the Secretarial Red Drum FMP. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: February 17, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3828 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–22–M

Scientific and Statistical Committees; Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings (with closed sessions) at the Holiday Inn Riverwalk, 217 North Saint Mary, San Antonio, TX, as follows:

Council

On March 12, from 8:30 a.m. to 5 p.m., will review Scientific and Statistical Committee (SSC) and Advisory Panel (AP) reappointments; discuss travel policies; review the draft amendment and proposed regulations for the Red Drum Fishery Management Plan (FMP) and take action, as well as discuss the reef fish options papers. (Also on March 12 the Council will convene a closed session (not open to the public) from 1 p.m. to 2:30 p.m. to discuss personnel matters). The public meeting will reconvene on March 13 at 8:30 a.m. and adjourn at noon.

Committees

On March 10, the Council's SSC Selection Committee will convene at 9:30 a.m., followed by a meeting of the Council's AP Selection Committee and its Personnel Committee (which will convene a closed session from 1 p.m. to 2:30 p.m. to discuss personnel matters). Subsequently, the Council's Administrative Policy Committee will convene, and adjourn its public meeting at 5 p.m. The Council's Red Drum Management Committee will convene its public meeting on March 11 at 8 a.m. followed by a public meeting of the Council's Reef Fish Management Committee, which will adjourn its meeting at 5 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881 , Tampa, FL 33609; telephone: (813) 228–2815.

Dated: February 17, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3829 Filed 2–23–87; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will convene sepaate public meetings, March 16–20, 1987, at the Hilton Hotel in Anchorage, AK, as follows:

Council

Will convene March 18 at 9 a.m. and continue to March 20 to review proposals for amendments to the Bering Sea/Aleutian Islands and Gulf of Alaska Groundfish Fishery Management

Plans (FMPs), and determine which should be sent for public review. Final decisions on these amendments will be made in May. The Council also will review salmon troll regulations for 1987 and receive a progress report on the revision of the Council's Salmon FMP. Regulations set by the Alaska Board of Fisheries for the 1987 king and Tanner crab fisheries also will be reviewed. The Council may convene an executive session (not open to the public) some time during the meeting to discuss personnel matters and ongoing litigation or foreign affairs.

SSC and AP

Will convene March 16 at 10 a.m. and continue on March 17. The SSC and AP agendas will generally be the same as that of the Council.

Other Council workgroup and plan team meetings also may be convened on short notice during the week. For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephne: (907) 274–4563.

Dated: February 17, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 3830 Filed 2–24–87; 8:45 am]

BILLING CODE 3510-22-M

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Research

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Alaska, North Carolina, New Jersey, and Michigan Coastal Management Programs and Oregon's South Slough National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315(f) of the CZMA requires a periodic review of the performance of each Reserve with respect to its operation and management. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2) (A) through (I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: February 17, 1987

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–3826 Filed 2–24–87; 8:45 a.m.]

BILLING CODE 3510-08-M

National Technical Information Service

Intent To Grant Exclusive Parent License; American Home Products Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to American Home Products Corporation, having a place of business at P.O. Box 8299, Philadelphia, PA 19101, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,571,385, "Genetic Reassortment of Rotaviruses for Production of Vaccines and Vaccine Precursors." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified sixty-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87–3804 Filed 2–24–87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancelling Staged Entry for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

February 20, 1987

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 30, 1986, a notice was published in the **Federal Register** (51 FR 47041), which, among other things, established staged entry periods for imports of man-made fiber textile products in Category 648, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1986 and extends through December 31, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule

3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 20, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on February 24, 1987, you cancel the staged entry periods established in the directive of December 23, 1986 for man-made fiber textile products in Category 648, produced or manufactured in the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–3998 Filed 2–24–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 26 March 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the areas of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

February 19, 1987.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–3856 Filed 2–24–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 18, 1987.

The meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Space-Based Radar, scheduled for February 26–27, 1987, has been postponed. The Committee will now meet at the Pentagon, Room 5D982, on March 12–13, 1987, from 8:00 A.M. to 5:00 P.M. each day.

The purpose of this meeting is to receive briefings on and to discuss requirements for a space-based radar system. These meetings are being held to prepare Board members to advise senior Air Force personnel on appropriate means of achieving stated requirements.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–3794 Filed 2–24–87; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Announcement; Formation of a Committee To Study Item Name Policy in the Federal Catalog System

The Defense Logistics Agency Directorate of Technical and Logistics Services announces the formation of the joint Government-Industry Federal Catalog System Item Name Policy Review Committee (INPRC). The purpose of the INPRC is to review and evaluate all policies, practices and procedures of assigning names to items of supply in the Federal Catalog System. The Federal Catalog System provides logistics data to the Governmental logistics community both civil and military. An accurate and complete logistics data base, especially item classification and identification data, is essential for the logistics community to do its job efficiently.

This study will cover all aspects of item naming in the Federal Catalog System including the development of item names selection, usage of item names, and coding of item names. All phases of item development which relate to naming will be reviewed from design through disposal. This review should result in the most efficient methods of item name determination in the earliest possible stage, to the agreement of Government and Industry. The full and complete item descriptions that should result from the improved item naming practices will enhance the acquisition process and help insure price reasonableness and competitiveness.

Any industrial organizations desiring input to the item name process are invited to participate in the work of the committee. Points of contact are Mr. Jack McDevitt, Defense Spares Initiatives Office (202) 695–8361, or Mr. Gregory Shanley, Defense Logistics Agency (202) 274–6491.

George J. Hehemann,

Colonel, USA, Deputy Executive Director, Technical and Logistics Services.

[FR Doc. 87–3805 Filed 2–24–87; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–85–000 et al.]

Electric Rate and Corporate Regulation Filings; Central Maine Power Co. et al.

February 19, 1987.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Co.

[Docket No. ER87–85–000]

Take notice that Central Maine Power Company ("CMP") on February 13, 1987, tendered for filing an amendment to its previous filing of November 6, 1986 which proposed a rate schedule for transmission service to be provided to Unitil Power Corporation ("Unitil") by CMP.

Under the proposed rate schedule, CMP will provide transmission service to Unitil for up to 31,000 kilowatts per year; payment will be on the basis of a demand charge. Assuming transmission of 26,000 kilowatts during the initial twelve-month period of service ending October 1987, CMP would receive approximately $411,840 in revenues during the first year of service. Copies of the filing have been served on Unitil, the Maine Public Utilities Commission, and the Office of the [Maine] Public Advocate.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Central Maine Power Co.

[Docket No. ER87–92–000]

Take notice that Central Maine Power Company ("CMP") on February 13, 1987, tendered for filing an amendment to its previous filing of November 10, 1986 which proposed a rate schedule for transmission service to be provided to Down East Peat, Ltd. ("DEP") by CMP.

Under the proposed rate schedule, beginning on or after December 31, 1988, CMP will provide transmission service to DEP for an initial 12,000 kilowatt block of energy on the basis of a negotiated cost-based demand charge. CMP will also provide transmission service for a second, 11,000 kilowatt block of energy pursuant to a negotiated useage-based charge. Assuming a 75 percent first year plant capacity factor, CMP would receive approximately $282,007 for the initial twelve-month period of service ending December 30, 1989. Copies of the filing have been served on Down East Peat, Ltd., Peat Products of America, Ltd., Peat Products of America, Inc., Down East Peat, L.P., the Maine Public Utilities Commission, and the Office of the [Maine] Public Advocate.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Co. of New York, Inc.

[Docket No. ER87–254–000]

Take notice that on February 13, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing a notice of termination of its currently effective Rate Schedule FERC No. 80, as supplemented. The Rate Schedule, dated April 25, 1986 provides for the sale of capacity and energy to Long Island Lighting Company ("LILCO").

The Rate Schedule has been terminated pursuant to its terms.

Con Edison seeks an effective date of January 1, 1987, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing has been served upon LILCO.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf States Utilities Co.

[Docket No. ER87–250–000]

Take notice that on February 10, 1987, Gulf States Utilities Company ("Gulf States") tendered for filing a Power Delivery Agreement between it and the City of Welsh, Louisiana. Gulf States indicates that the Agreement for services at the parties' standard rates and terms for such services.

According to Gulf States, a copy of the filing was served upon the Public Utility Commission of Texas, the Louisiana Public Service Commission, and the City of Welsh, Louisiana.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Power Co.

[Docket No. ER87–152–000]

Take notice that on February 13, 1987, Nevada Power Company ("NPC") tendered for filing a Notice of Cancellation of the Power Coordination Agreement between Arizona Public Service Company (APS) and NPC, *FERC Rate Schedule No. 9,* which provides for power coordination with APS.

NPC requests to cancel said Agreement effective January 31, 1987.

Copies of this filing have been served upon APS, the Arizona Corporation Commission, and the Public Service Commission of Nevada.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER87–253–000]

Take notice that on February 13, 1987, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement providing for amendments to the existing contract for the sale by Tampa Electric to Florida Power & Light Company (FPL) of capacity and energy from Tampa Electric's Big Bend No. 4 generating unit, designated as Tampa Electric's Rate Schedule FERC No. 25. Tampa Electric states that the Letter agreement modifies the fuel cost and production operation and maintenance expense components of the energy charge formula under the contract, and it intended to make energy sales under the contract more competitive.

Tampa Electric proposes an effective date of February 14, 1987, for the contract modifications, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on FPL and the Florida Public Service Commission.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3865 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87–92–001 et al.]

Natural Gas Certificate Filings; Texas Eastern Transmission Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation; PennEast Gas Services Company

[Docket No. CP87–92–001]

February 17, 1987.

Take notice that on February 9, 1987, Texas Eastern Transmission Corporation (Texas Eastern) and PennEast Gas Service Company (PennEast), jointly referred to as Applicants, Post Office Box 2521, Houston, Texas 77252, filed in Docket

No. CP87–92–001 an amendment to the joint application in Docket No. CP87–92–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, to reflect a modification to the proposed facilities for which authorization to construct and operate was sought in Docket No. CP87–92–000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that the pipeline facilities for which authorization was requested in Docket No. CP87–92–000 were comprised of 316 miles of new pipeline and 63,000 horsepower (HP) additional compression. Applicants further state that, as part of the Capacity Restoration Program, Texas Eastern sought authorization in the original joint application to construct and operate in 1988, 15.2 miles of 24-inch pipeline extending from its Line No. 20 in Middlesex County, New Jersey, to its Line No. 20–B near its Hanover Compressor Station in Morris County, New Jersey (the Hanover Loop).

Applicants request that the original application be amended as follows:

(1) Delete Texas Eastern's request to construct and operate 15.20 miles of 24-inch pipeline in various counties in New Jersey (the Hanover Loop);

(2) Texas Eastern requests authorization to install and operate up to 16,000 HP turbine centrifugal compressor unit, to upgrade two existing DC–990 turbine units from 4,000 HP to 5,100 HP each; to abandon four 1,100 HP reciprocating compressor units, and modify station piping, at its Lambertville Compressor Station No. 26, located in Hunterdon County, New Jersey.

(3) PennEast requests authorization to include in its rate base those amounts to be reimbursed to Texas Eastern for the proposed Station 26 compression addition.

Applicants state that the direct cost of the proposed facilities is estimated to be $18,130,000. Applicants state that the total capital cost of the Capacity Restoration program would be $524,292,000. It is indicated that Texas Eastern's plan of financing remains unchanged from the original application.

It is indicated that the alternative facilities to the Hanover Loop would provide the same capacity sought by the original joint application. It is further indicated that the 1987 construction and utilization of capacity would remain unchanged. Applicants state that the revision to the proposed facilities by this amendment would provide an environmentally acceptable alternative to the Hanover Loop.

Comment date: March 3, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP87–186–000]

February 19, 1987.

Take notice that on January 30, 1987, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37939–0245, filed in Docket No. CP87–186–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate three delivery points for service to existing distribution customers in Tennessee under the certificate issued in Docket No. CP82–412–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee proposes to establish new delivery points for Marion Natural Gas System in Marion County, Tennessee, to serve a new industrial customer, Resources Limited; for Chattanooga Gas Company in Hamilton County, Tennessee, to serve a new residential subdivision; and for Loudon Utilities in Loudon County, Tennessee, to serve a new residential community.

It is stated that the volumes to be delivered through the proposed delivery points would be within existing entitlements for the three customers. It is asserted that no customers would be adversely affected by the addition of the three delivery points.

Comment date: April 6, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corporation

[Docket No. CP87–192–000]

February 19, 1987.

Take notice that on February 3, 1987, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP87–192–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional natural gas storage facility at MRT's West Unionville Storage Field, located in Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT proposes the drilling and operation of an additional injection/withdrawal well in its West Unionville storage field and the construction and operation of minor appurtenant facilities to connect the proposed well to the existing storage field gathering system or to its west line. MRT states that the proposed well would increase the overall deliverability of the field, but would not alter the total storage capacity of the field.

MRT estimates the total cost of the proposed construction of the well and related facilities to be $989,500.

Comment date: March 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP66–43–001]

February 19, 1987.

Take notice that on February 30, 1987, Texas Eastern Transmission Corporation (Petitioner), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP66–43–001 a petition to amend the order issued April 29, 1966, in Docket No. CP66–43 pursuant to section 7(c) of the Natural Gas Act in order to authorize certain revisions to Petitioner's Rate Schedule SS, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By orders issued on April 29, 1966, and October 30, 1967, in Docket No. CP66–43, Petitioner was authorized to construct and operate certain facilities (including the Staten Island LNG facility) and to provide firm storage service to several customers of Petitioner pursuant to Rate Schedule SS.

It is indicated that on February 10, 1973, the Staten Island facility was severely damaged by fire. It is further indicated that on September 5, 1985, in Docket No. CP85–859–000, Petitioner filed an application requesting authority to abandon the Staten Island LNG facility. Petitioner states that such abandonment of the LNG facility was granted by Commission order issued April 21, 1986.

Petitioner seeks to amend the certificate of public convenience and necessity in Docket No. CP66–43 in order to conform the applicability and character of service under its SS Rate Schedule to that required as a result of the Commission's order authorizing abandonment of the Staten Island LNG facility used in conjunction with the SS service, issued in Docket No. CP85–859–000. Petitioner states that the pro-forma revised tariff sheets, attached as Exhibit P to the application, would clarify that daily deliveries of natural gas under the service would, in addition to

curtailments as a result of force majeure events, also be subject to curtailment or interruption as a result of capacity limitations caused by the destruction and abandonment of the Staten Island LNG facility. Petitioner further states that the revised tariff sheets would provide for curtailment in this eventuality on a pro-rata basis among all customers receiving SS service. Petitioner indicates that the proposed tariff sheets would limit the duration of the effectiveness of the revisions to the period of time elapsing prior to the date on which the capacity lost due to the destruction and abandonment of the LNG facility is restored to the system.

It is explained that on November 24, 1986, Petitioner filed a certificate application in Docket No. CP87–92–000 requesting authorization of its Capacity Restoration Program involving the construction of pipeline facilities which, *inter alia*, would provide capacity to alleviate the peak-day capacity deficiency created by abandonment of the Staten Island LNG facility. Petitioner states that, in the interim, approval of the proposed tariff sheets would allow Petitioner to reflect the operating facts resulting form the destruction and abandonment of the Staten Island LNG facility which is to be effective only until such time as the capacity lost by virture of the LNG facility's destruction is restored.

Comment date: March 12, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP87–183–000]

February 19, 1987.

Take notice that on January 29, 1987, Northwest Central Pipeline Corporation [1] (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–183–000, as amended February 6, 1987, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim and in place approximately 4.50 miles of 8-inch lateral pipeline and appurtenant facilities in Allen County, Kansas, under the authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

[1] Northwest Central states that on January 1, 1987, it changed its name to Williams Natural Gas Company and will soon file a petition to effectuate such name change for all Commission dockets.

Northwest Central states that the existing 8-inch lateral pipeline was installed in 1929 and requires extensive maintenance. It is further stated that the 8-inch pipeline would remain in service until construction of a 12-inch replacement line is completed pursuant to § 157.208 of the Commission's Regulations. The cost to reclaim would be $55,000 and the estimated salvage value would be $16,138, it is stated.

Northwest Central states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: April 6, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP87–188–000]

February 19, 1987.

Take notice that on January 30, 1987, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87–188–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization of partial abandonment of certain transportation services to Sun Refining and Marketing Company (Sun), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to partially abandon transportation for Sun under an agreement dated February 3, 1970, which is on file with the Commission as Rate Schedule X–11. Specifically, Applicant states that it currently transports up to 60,000 dt equivalent of natural gas per day for Sun on a firm basis and by mutual agreement with Sun wants to reduce this amount to 40,000 dt equivalent of natural gas per day. Applicant presently receives the gas at seven points in Texas, Louisiana, and Mississippi, and delivers it to Sun's Marcus Hook Refinery and its Sun Oil Chemical Company both located in Delaware County, Pennsylvania, and Sun's McComb Field located in Pike County, Mississippi.

Applicant states that Sun's requirements for natural gas at its Marcus Hook Refinery have been permanently reduced due to the shutdown of lubricating oil manufacturing operations and increased production of by-product refinery fuel gas. Applicant also states that the proposed partial abandonment of services would not result in the abandonment of any facilities.

Comment date: March 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP87–181–000]

February 19, 1987.

Take notice that on January 29, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–181–000 an application pursuant to section 7(b) of the natural Gas Act for permission and approval to abandon certain transportation services on behalf of South Jersey Gas Company (South Jersey) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to abandon, effective April 16, 1986, the receipt, transportation and redelivery of natural gas for South Jersey authorized by Commission order issued on December 29, 1977, in Docket No. CP77–639, and amended in Docket No. CP77–639–002 on December 14, 1982. Trunkline states that such order authorized Trunkline to receive gas on South Jersey's behalf at a point of interconnection located in South Tomball field in Harris County, Texas, and to transport the gas to a point of interconnection between the facilities of Trunkline and transcontinental Gas Pipe Line Corporation (Transco) near Ragley in Beauregard Parish, Louisiana for ultimate delivery to South Jersey. Trunkline also requests authority to physically abandon the measuring station and appurtenant facilities associated with the proposed abandonment of service at the Harris County, Texas delivery point, and to cancel Rate Schedule T–37 of its FERC Gas Tariff Original Volume No. 2 under which the transportation service referenced herein has been provided.

Comment date: March 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP87–197–000]

February 19, 1987.

Take notice that on February 9, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, (United), pursuant to section 7(c) of the Natural Gas Act, as amended, filed in Docket No. CP87–197–000, an abbreviated application for a certificate of public convenience and necessity authorizing interruptible transportation of natural gas for Tennessee Gas Pipe

Line Company (Tennessee) under the gas transportation agreement between United and Tennessee, dated September 18, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states, that the agreement provides for Tennessee to cause delivery of up to 250 Mcf of natural gas per day to United at the interconnection of facilities of United and Tennessee in Plaquemines Parish, Louisiana. United also states that it would redeliver an equivalent volume to Tennessee near West Monroe, Ouachita Parish, Louisiana. United indicates that the agreement extends for a period beginning September 18, 1986, and ends June 30, 1991, and for successive one year terms thereafter.

United proposes to charge Tennessee a rate of 26.89 cents for each Mcf delivered to the point of delivery, plus the currently effective Gas Research Institute surcharge. United states that no facilities need be constructed to implement the transportation service.

Comment date: March 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3866 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87–264–000]

County of Kent, Michigan; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 19, 1987.

On February 17, 1986, County of Kent, Michigan (Applicant), of 1500 Scribner, NW., Grand Rapids, Michigan 49504 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of Grand Rapids, Michigan. The facility will consist of a solid waste-fired steam generator and an extraction/condensing turbine-generator set. The electric power production capacity will be approximately 19 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Small amounts of natural gas or oil will be used (approximately 0.5% of the total energy input to the facility) for start-up and flame stabilization. Construction of the facility is scheduled to begin prior to October 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3867 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87–1–31–002]

Arkla Energy Resources, a Division of Arkla, Inc.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

February 18, 1987.

Take notice that on February 9, 1987 Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

1st Substitute 41st Revised Sheet No. 185, Original Volume No. 3, Rate Schedule No. X–26

1st Substitute 42nd Revised Sheet No. 4, First Revised Volume No. 1, Rate Schedule No. G–2

The purpose of the above tariff sheets is to revise AER's regular semi-annual PGA rates by (1) reducing the Average Cost of Purchased Gas for the six-month period commencing October 1, 1986, based on revised demand costs for its purchase of gas from Texas Gas Transmission Corporation and (2) eliminating from total supply, gas delivered to storage, as reflected on revised Page 1 of Exhibit A Summary.

These revisions reduce AER's system cost of gas for the PGA period by ($2,653,371) which equates to a current adjustment change from ($.0661) to ($.1031) or ($.0370).

The reduction in cost will be flowed thru to AER's jurisdictional customers through billing adjustments effective retroactive to October 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3868 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85–692–002]

Cities Service Oil and Gas Corporation and CanadianOxy Offshore Production Co.; Application

February 19, 1987.

Take notice that on February 6, 1987, Cities Service Oil and Gas Corporation, *et al.* (Cities), pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations promulgated thereunder, and in accordance with § 2.77(b) promulgated by Order No. 436, in Docket No. RM85–1–000, filed an application requesting that in Docket No. CI85–692–002, the Commission amend its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates issued October 29, 1985, as extended by Order issued March 31, 1986, by further extending the abandonment and sales authority granted in that order for a term not to exceed five (5) years from the date of authorization, all as more fully described in the application which is on file with the Commission and open to public inspection.

Cities states that the circumstances that called forth Cities' application filed on September 19, 1985 and supported issuance of the Commission's October 29, 1985 order will continue beyond the March 31, 1987 termination date as extended by order issued March 31, 1986. If the limited-term abandonment and sales certificate authority granted by the October 29, 1985 order is extended beyond March 31, 1987, Cities states that it will continue existing sales and will make additional sales.

Any person desiring to be heard or to make any protests with reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3869 Filed 2–24–87; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. CI87–293–000]

Conoco Inc.; Application for a Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonment

February 19, 1987.

Take notice that on February 9, 1987, Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (15 U.S.C. 717c and f) and Part 157 of the Commission's Regulations under the Natural Gas Act (18 CFR Part 157), for the issuance of a Blanket Limited-Term Certificate of Public Convenience and Necessity and other authorizations which would: (1) Authorize the limited-term sale of natural gas in interstate commerce for resale by Conoco; (2) authorize pre-granted abandonment; and (3) authorize abandonment of sales of natural gas made pursuant to the requested certificate upon expiration of the term of such sales. This blanket certificate and other authorizations are necessary to enable Conoco to initiate sales of gas from developed properties which are subject to Natural Gas Act jurisdiction and which are currently uncommitted.

Any person desiring to be heard or to make any protest with reference to said request should on or before March 4, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 385.214). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

	Conoco working interest (percent)	Estimated volume Mcfd [3]	NGPA category
South Marsh Island 288 cc Offshore, LA. (OCS-G2316) [1]	50	460	[4] 102
Eugene Island 361 Offshore, LA. (OCS-G2324) [1]	15	5,700	[4] 102
Vermilion 119, H7 well Offshore, LA. (OCS 0487) [2]	25	600	109

[1] Chevron USA Inc. operated.
[2] Conoco Inc. operated.
[3] Conoco is an under produced working interest owner and the estimates below reflect Conoco's actual working interest; actual daily volumes may differ to the extent that Conoco is able to recoup its under produced volumes.
[4] Old OCS.

[FR Doc. 87–3870 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 86–45–016]

El Paso Natural Gas Co.; Compliance Filing

February 18, 1987.

Take notice that on February 11, 1987, El Paso Natural Gas Company (El Paso) tendered for filing revised and original tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1–A, Third Revised Volume No. 2, and Original Volume No. 2A.

El Paso states that the tendered tariff sheets which set forth the rates, terms and conditions under which it will render open, non-discriminatory transportation service in accordance with the Commission's Order No. 436, *et seq.*, are those originally attached to and made part of its Offer of Settlement filed March 21, 1986 in this proceeding, modified to reflect changes to the fuel reimbursement provisions of Rate Schedules T–1 and T–3, and the operating provisions governing interruptible and firm transportation service mandated by the Commission's "Order Approving Contested Offer of

Settlement Subject to Conditions" issued June 27, 1986, and to reflect certain order rate and tariff provision changes approved by the Commission in other docketed proceedings after the Offer of Settlement was filed.

El Paso respectfully requests waiver of all applicable Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on March 1, 1987.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP86–45–000 and, otherwise, upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol, Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before February 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3871 Filed, 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP68–179–007]

Florida Gas Transmission Co.; Proposed Original FERC Gas Tariff Sheet

Take notice that Florida Gas Transmission Company ("Florida Gas") on February 17, 1987 tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, the following sheet: Original Sheet No. 57A

This tariff sheet constitutes a new tariff sheet added to Florida Gas' existing First Revised Volume No. 1 in order to comply with Ordering Paragraph (D) of the Commission's order dated January 16, 1987, in *Florida Gas Transmission Company*, Docket No. CP68–179–006, *et al* (the "January 16 Order"). In the January 16 Order, the Commission authorized the construction and operation of the facilities described in Docket No. CP74–192–009. By virtue of this construction, the capacity of Florida Gas' system will be increased by approximately 100,000 Mcf per day. The FERC provided that the incremental capacity associated with the new facilities would be allocated to Florida Gas' customers in curtailment categories Priority 1 through Priority 9 on an interim basis in the manner described more fully in the January 16 Order. The Commission required that Florida Gas file tariff sheets within thirty days of the issuance of the January 16 Order setting forth an allocation methodology developed in accordance with the guidelines set forth in the Commission's order. Original Sheet No. 57A is being submitted in compliance with that directive.

The proposed effective date of this tariff sheet is February 17, 1987.

A copy of this filing was served on each party required to be served by the Commission's regulations.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice & Procedure. All such motions or protests should be filed on or before February 25, 1987. The protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person who wishes to become a party must file motion to intervene. Copies of this filing are on file with the Commission and made available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3872 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87–295–000]

Gulf Energy Marketing Co.; Application of Gulf Energy Marketing Company for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Pregranted Abandonment

February 19, 1987.

Take notice that on February 9, 1987, Gulf Energy Marketing Company ("Gulf Energy"), pursuant to sections 4 and 7 of the Natural Gas Act ("NGA"), and Parts 154 and 157 of the Regulations of the Federal Energy Regulatory Commission ("Commission"), 18 CFR Parts 154 and 157, applied for a blanket certificate of public convenience and necessity: (1) Authorizing sales for resale of natural gas in interstate commerce by Gulf Energy, and certain producers from whom Gulf Energy purchases natural gas (a) who have received abandonment approval from the Commission in a separate proceeding, (b) who have qualified for automatic abandonment authority pursuant to Order No. 451, or (c) who have NGA-regulated gas supplies never sold for resale in interstate commerce; (2) authorizing sales for resale of natural gas in interstate commerce by certain producers through Gulf Energy acting as their agent; and (3) authorizing pre-granted abandonment of such sales.

Gulf Energy states tht such authorities, if granted, will enable Gulf Energy to sell natural gas in the spot market which it purchases from certain producers, as described more fully in its application. Such authority will also enable Gulf Energy to act as agent for certain producers in the sale for resale of their gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3873 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87–301–000]

Marathon Oil Co.; Application

February 19, 1987.

Take notice that on February 10, 1987, Marathon Oil Company ("Marathon") filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act ("NGA") and § 2.77, Parts 154 and 157 of the Commission's regulations. The application requests an order (1) authorizing blanket limited-term abandonment of certain sales for resale of natural gas released by interstate pipeline purchasers, (2) issuing a blanket limited-term certificate of public convenience and necessity

authorizing the sale for resale of such natural gas in interstate commerce for three years, and (3) authorizing blanket pre-granted abandonment of any sales for resale of natural gas made under the requested certificate. Marathon also requests waiver of certain Commission regulations and requests that the authorizations sought in this proceeding be considered on an expedited basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1987, file with the Federal Energy Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (187 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3874 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87–292–000]

Mobile Oil Corp., et al.; Application for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonments

February 19, 1987.

Take notice that on February 6, 1987, Mobil Oil Corporation, Mobil Producing Texas & New Mexico Inc., Mobil Oil Exploration & Producing Southeast Inc. and Mobil Exploration and Producing North America Inc. (jointly referred to as Mobil), 9 Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking (i) a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas, with pre-granted abandonment and (ii) a blanket limited-term abandonment, all for a term from April 1, 1987 through March 31, 1989, as more fully described in the Application which is on file with the Commission and open for public inspection.

Mobil states that the authority as requested is consistent with the Commission's rules and regulations and is necessary for Mobil to make short-term, best efforts and spot gas sales. Further, Mobil states that, absent said authorization, the flexibility and efficiency necessary for successful operation in the spot market would be hindered, and gas would be shut-in or significantly excluded from the market-place.

Specifically, Mobil requests that the Commission authorize Mobil:

(i) To make sales for resale in interstate commerce for a period of two years, with pre-granted abandonment of any such sale, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction that is produced from various interests owned by Mobil or produced from various interests attributable to other owners having interests in the same wells as Mobil, to the extent that such co-owners agree;

(ii) To abandon for a two-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission, to the extent that such gas is released from contract by interstate pipelines for resale to third parties; and

(iii) A waiver of Part 154 of the Commission's Regulations concerning the establishment of rate schedules for any sales made under (i).

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3875 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RI87–2–000]

Plains Petroleum Co. and Plains Petroleum Operating Co.; Petition for Recovery of Excess Royalty Payments and for Declaratory Order

Issued: February 19, 1987.

Take notice that on January 16, 1987, Plains Petroleum Company and Plains Petroleum Operating Company (Plains) filed in the above-captioned docket a petition seeking (1) authorization to recover from KN Energy Inc. (KN) "excess royalty" payments made with respect to certain sales of natural gas to KN from October 1, 1984, through December 31, 1986, and (2) a declaratory order stating that, with respect to certain sales to KN from and after January 1, 1987, under a contract between Plains and KN that was renegotiated pursuant to Order No. 451, Plains needs no further Commission authority to recover its excess royalty payments from KN so long as the total price paid by KN under such contract does not exceed the new alternative price ceiling prescribed by Order No. 451. Plains alternatively asks, in the event the Commission declines to issue such declaratory order, for authorization to apply a surcharge in the amount of the per-MMBtu excess royalty payment to all gas sold to KN from and after January 1, 1987, attributable to leases subject to the excess royalty obligation. On February 10, 1987, Plains filed an amendment to its petition that adjusts the amounts for which recovery is requested with respect to sales made between October 1, 1984, and December 31, 1986.

Plains states that it has recently settled certain litigation with a plaintiff class consisting of owners of lands in Southwest Kansas from which Plains produces natural gas. In accordance with the settlement agreement, which was approved by the District Court of Kearny County, Kansas, on December 29, 1986, Plains is obligated to pay the landowner class certain amounts in settlement of a dispute concerning the interpretation of the terms "market value," "market rate," and "market price" in the royalty provisions of the oil and gas leases between Plains and the landowners. Specifically, Plains is required to make additional royalty payments for the period October 1, 1984, through August 31, 1986, based upon the difference between the royalties previously paid on the basis of applicable maximum lawful prices prescribed in Section 104 of the Natural Gas Policy Act of 1978 (NGPA), which Plains received from sale of the gas, and

royalties based upon the maximum lawful price prescribed by the Commission for NGPA section 106(b)(1)(B) gas. From September 1, 1986, forward, Plains must make additional royalty payments based upon the greater of (a) $1.787/MMBtu for the month of September 1986 (as adjusted monthly thereafter for inflation under the NGPA) or a lower "market clearing price," subject to review by Plains and the landowner class and to redetermination through binding arbitration, or (b) the actual proceeds received by Plains from sale of the gas.

Plains further states in its petition (as amended) that, under the settlement terms outlined above, its excess royalty liability for sales made between October 1, 1984, and December 31, 1986, is approximately $1,528,709.67. This amount, Plains notes, has been disbursed to the landowner class. Plains estimates that its excess royalty payment for January 1987 sales subject to the settlement agreement will be $.051 per MMBtu.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure. Motions to intervene or protest should be filed not later than 30 days following publication of this notice in the **Federal Register**. All protests filed will be considered by the Commission but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3876 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87–1–40–003]

Raton Gas Transmission Co.; Compliance Filing

February 18, 1987.

Take notice that on February 5, 1987, Raton Gas Transmission Co. (Raton) tendered for filing Substitute Seventh Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1 in compliance with the Commission's letter order dated September 22, 1986 in Raton's PGA tracking rates of its pipeline supplier, Colorado Interstate Gas Company (CIG), and the Commission's order dated December 30, 1986 accepting CIG's Substitute Twenty-Sixth Revised Sheet No. 7. Raton requests an effective date for its Substitute Seventh Revised Sheet No. 4 of October 1, 1986 to coincide with CIG's approved rate. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 12, 1987.

Raton states that it will make refunds, together with interest as required, upon receipt of approval of this rate change.

Copies of this filing were sent to Raton Natural Gas Company, Midwest Energy Corp., and the Public Service Commission of New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Eenrgy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3877 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

Docket No. CI86–33–002]

Sun Exploration and Production Co.; Application

February 19, 1987.

Take notice that on January 28, 1987, as amended on February 11, 1987 Sun Exploration and Production Company ("Sun"), P.O. Box 2880, Dallas, Texas 75221, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's ("Commission") regulations under the Natural Gas Act requesting modification of the Commission's December 5, 1985 Order Permitting and Approving Limited-Term Abandonment and Granting Certificates by requesting the term be extended from one (1) year to three (3) years substituting March 31, 1990 for March 1, 1987 therein. In addition Sun has also requested that all NGPA vintages of gas 102(d), 104, 106, 108 and 109 be covered, thus removing the provision that allowed only the resale of gas priced above the 109 rate. The certificate would (1) Continue to authorize the sale of natural gas by Sun and its working interest owners for resale in interstate commerce; (2) permit temporary partial abandonment of certain natural gas sales; (3) and confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate.

Any person desiring to be heard or to make any protest which reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3878 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6501–001]

Twin Falls Beaver Ranch; Surrender of Exemption

February 13, 1987.

Take notice that the Twin Falls Beaver Ranch, exemptee for the proposed Beaver Ranch Project No. 6501, has requested by letter dated January 6, 1987, that its exemption be terminated. The exemption was issued November 9, 1982. The project would have been located on Springs tributary to the Snake River in Twin Falls County, Idaho. There has been no construction activity.

The exemption for Project No. 6501 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFr

Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3803 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00238; FRL-3161-2]

Federal Insecticide, Fungicide and Rodenticide Act Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the special review of cyanazine, a briefing paper on the Tolerance Assessment System, and proposed revision of Guidelines for Immunotoxicity Testing of Biochemical Pest Control Agents (BPCA's), Subdivision M.

DATE: Tuesday, March 24, 1987, from 8:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held at: U.S. Environmental Protection Agency, Room 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By Mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), 401 M Street, SW., Washington DC 20460. Office location and phone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703) 557–7695.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of the scientific issues being considered by the Agency in connection with the Special Review of cyanazine.
2. Review of a briefing paper on the Tolerance Assessment System (TAS). TAS is a computer-based tool which can estimate dietary exposure to a pesticide and then compare that estimate to a previously determined acceptable dietary intake.
3. Review of proposed revised Guidelines for Immunotoxicity Testing of Biochemical Pest Control Agents (BPCA's), for Subdivision M.
4. Completion of any unfinished business from previous Panel meetings.
5. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1–3 above may be obtained by contacting:

Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 240, Crystal Mall No. 2, Arlington, VA, 703–557–7400.

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no later than March 10, 1987, in order to ensure appropriate consideration by the Panel.

Dated: February 18, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–3841 Filed 2–24–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3159-1]

Science Advisory Board; Environmental Effects, Transport and Fate Committee; Municipal Waste Combustion Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a two-day meeting of the Municipal Waste Combustion Subcommittee of the Science Advisory Board's Environmental Effects, Transport and Fate Committee will be held on March 9 and 10, 1987. The meeting will begin at 9:00 a.m. on March 9, in the conference facilities of the National Center for Atmospheric Research (NCAR) Mesa Laboratory on Table Mesa Drive, Boulder, Colorado, and will adjourn on March 10, no later than 4:00 p.m.

The main purpose of the meeting is to continue with a review of a series of scientific issues related to municipal waste incineration. The Subcommittee will spend considerable meeting time drafting a report which summarizes these issues and describes the technology used for incinerating municipal waste. A briefing will also be given detailing a research plan for municipal waste combustion, as developed by EPA's Office of Research and Development.

The meeting will be open to the public. Any member of the public who wishes to attend, present information to the subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary (A101–F), Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. EPA, 401 M. Street, SW., Washington, DC 20460, Telephone (202) 382–2552 or FTS 8–382–2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than March 5, 1987 in order to be assured of space on the agenda.

Dated: February 13, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–3843 Filed 2–24–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3160-8]

Science Advisory Board, Integrated Environmental Management Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given of a meeting of the Science Advisory Board's Integrated Environmental Management Subcommittee on March 16–17, 1987 at the U.S. EPA Region 3, 841 Chestnut Street, Philadelphia, Pa. 19107, in Conference Room 8A. The meeting will begin at 9:00 a.m. on March 16th and will adjourn at approximately 3:00 p.m. on March 17, 1987.

The principal purpose of the meeting is to provide the Subcommittee with the opportunity to independently review the scientific quality of the Environmental Protection Agency's "Kanawha Valley Environmental Overview Report." Any

member of the public wishing to obtain further information about this report should contact Mr. Green Jones, EPA Region III, 841 Chestnut Street, Philadelphia, Pa., or call Mr. Jones at (215) 597–9800.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, DC 20460 or call (202) 382–4126 by close of business March 9, 1987.

Dated: February 17, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–3842 Filed 2–23–87; 8:45 am]

BILLING CODE 6560–50–M

[SW–FRL–3161–1]

Uncontrolled Hazardous Waste Sites; Availability of Documents and Information

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of information.

SUMMARY: The Environmental Protection Agency today publishes this announcement which is consistent with its April 18, 1985 Interim Information Release Policy. This announcement concerns the availability of documents and data generated from the investigation of uncontrolled hazardous or potentially hazardous waste sites. The documents and information addressed by this notice may include the identity, quantity, physical state, concentration, and containment of toxic substances at a site, and their potential effect on ground water, surface water, drinking water, food chain, soil, and air in the vicinity of a site. This information is generally available in documents called Preliminary Assessments (PA) and Site Inspection (SI) reports. The PA and SI are available to the public as soon as they are completed. The instructions for completing the PA and SI reports are also available upon request.

If the information described above is available, but has not been recorded in either a PA or an SI report, then that information will also be available upon request. In addition, sampling data on a site which have been verified as analytically accurate are available to the public upon request.

ADDRESSES: The information described herein, and the PA/SI reports, as well as directions for completing those reports may be obtained from the appropriate EPA Regional offices.

Susan Svirskey, EPA—Region I, John F. Kennedy Federal Bldg., Boston, MA 02203, 616/565–3661

Ben Conetta, EPA—Region II, 26 Federal Plaza, New York, NY 10278, 212/264–6324

Connie Carr, EPA—Region III, 841 Chestnut Street, Philadelphia, PA 19107, 215/597–4966/3535

Richard Ferrazzuolo, EPA—Region VI, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–2234

Jeanne Griffin, EPA—Region V, 230 S. Dearborn Street, Chicago, IL 60604, 312/886–3007

Barry Nach, EPA—Region VI, First International Bldg., 1201 Elm Street, Dallas, TX 75270, 214/767–4075

Shelly Brodie, EPA—Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236–2856

Dave Shaller, EPA—Region VIII, One Denver Pl., 18th St., Denver, CO 80202, 303/293–1537

Holly Hadlock, EPA—Region IX, 215 Fremont Street, San Francisco, CA 94105, 415/974–7931

Debbie Flood, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, 206/442–2722

FOR FURTHER INFORMATION CONTACT: Trudi J. Fancher, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Phone (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION: EPA collects information about hazardous waste sites in documents called Preliminary Assessment and Site Inspection reports, as well as a series of documents, which EPA considers deliberative, called HRS (Hazard Ranking System) package documents. Preliminary Assessment and Site Inspection Reports, which are not HRS package documents, are available to the public on request in both draft and final form as soon as they are completed. The instructions used in completing both the Preliminary Assessment and the Site Inspection Reports are also publicly available on request.

The Preliminary Assessment and Site Inspection Report may contain information about the identity, quantity, physical state, and concentration of toxic substances at a site, and their potential effect on the ground water, surface water, drinking water, food chain, soil, and air in the vicinity of the site. They also may include information about the containment of toxic substances at the site.

In those instances where EPA has collected the information described in the above paragraph by the time the Preliminary Assessment or Site Inspection Report was prepared (that is to say, before the HRS evaluation process regarding the site has commenced), but has not recorded the information on either the Preliminary Assessment or the Site Inspection Report, EPA shall make this information available to the public on request.

In addition, whether or not the above information is reflected in the Preliminary Assessment or Site Inspection Report, sampling data on a site that have been verified as analytically accurate by EPA are routinely available to the public on request. Such verified sampling data may include information about the identity and concentration of toxic substances at a site.

If the identity of the toxic substances at a site is not included in the Preliminary Assessment or Site Inspection Report, and the identity of the substances is not indicated in the sampling data described above, EPA shall generally make this information available to the public on request. However, if the identity of the toxic substances is contained in supplemental reports, not developed by EPA and not related to EPA's sampling efforts, and the identity of the substances itself is the subject of a deliberative process, then the identities of these substances need not be released by EPA until the completion of that process. In endeavoring to make available to the public, information about the identity of toxic substances at a site, EPA need not release HRS drafts or other documents generated in the Hazard Ranking System evaluation process, which documents EPA considers deliberative, until the completion of that process.

With the exception of the instruction forms to the Preliminary Assessment and Site Inspection Report, EPA reserves the right to withhold the above information in accordance with Exemption 7 of the Freedom of Information Act.

Dated: February 17, 1987.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87–3840 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3161–6]

The Asbestos Hazard Emergency Response Act Negotiated Rulemaking Advisory Committee; Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of an

open meeting of the Advisory Committee negotiating proposed regulations under the Asbestos Hazard Emergency Response Act (AHERA) of 1986.

The meeting is scheduled on Tuesday, March 10, 1987,in the Crabtree Auditorium at the National Education Association, 1201 16th Street, NW., Washington, DC. The meeting will begin at 9:00 a.m. and will run until completion.

The purpose of this meeting is to continue working on the substantive issues the Committee has identified for resolution.

If interested in attending, or in receiving more information, please contact Kathy Tyson at (202) 382–5479.

Dated: February 19, 1987.

Milton Russell,

Assistant Administrator.

[FR Doc. 87–3987 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1644]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

February 18, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed within 16 days after date of publication) See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments FM Broadcast Stations. (Ketchum, Oklahoma) (MM Docket No. 86–14, RM–5132) Number of petitions received: 1.

Subject: Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements. (CC Docket No. 86–127) Number of Petitions received: 2.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3851 Filed 2–24–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Capital Shipping Corp., 55 Edward Hart Drive, Jersey City, NJ 07305. Officer: Chang Do Park, President

John Ha Kim (Tom) dba Overseas Moving Center, 1687 South Elmhurst Road, Elk Grove Village, IL 60007

Delta Shipping and Marketing Corp., 825 Windham Court North, Wyckoff, NJ 07481. Officers: Dr. Nurettin Ayasun, Director, Tarik N. Ayasun, President/Director, Behcet Tuysuzoglu, Vice President

Daniel P. San Diego dba SAS International, 200 62nd Street, Brooklyn, NY 11220

Carlos Adolfo Marzol, 6841 S.W. 3rd Street, Miami, FL 33144

Eagle Shipping & Trading Corp., 1380 Flatbush Avenue, Brooklyn, NY 11210. Officers:, Sydney F. M. Ross, President, Mary Ross, Secretary/Treasurer

David Tzuwei Yang dba SMS Express Company, 8518 Turpin Street, Rosemead, CA 91770

Joe Castano dba On Board Shipping Company, 1513 Broadmoor Avenue, West Covina, CA 91790

R. G. Curbelo, Inc., 8496 N.W. 61st Street, Miami, FL 33166. Officers: Rachel G. Curbelo, President/Director, Raquel Martinez, Vice President, Oscar Rojas, Secretary/Treasurer

Magellan Shipping, Inc., 91 Ivy Lane, Tenafly, NJ 07670, Michael Rubin, Director/President, Mona Rubin, Secretary

Dunnington & Arnold, Inc., 11222 La Cienega Blvd., Suite 415, Inglewood, CA 90304. Officer: Joseph L. Vidal, President

Scully & Company, Incorporated, 149 Sheldon Street, EL Segundo, CA 90245. Officers: Stephen C. Scully, President, Stephen Orton, Vice President, Harold E. Scully, Secretary/Treasurer

Dated February 19, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–3801 Filed 2–24–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Granite Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 12, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank of Granite Corporation,* Granite Falls, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Granite, Granite Falls, North Carolina.

2. *First Virginia Banks, Inc.,* Falls Church, Virginia; to acquire 100 percent of the voting shares of Clinch Valley Bank and Trust Company, Richlands, Virginia. Comments on this application must be received by March 13, 1987.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens Investments, Inc.,* Vineland, New Jersey; to acquire 100 percent of the voting shares of Sun

National Bank, Medford, New Jersey. Comments on this application must be received by March 17, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with Jackson County Bancshares, Inc., Scottsboro, Alabama, and thereby indirectly acquire The Jackson County Bank, Scottsboro, Alabama. Comments on this application must be received by March 13, 1987.

2. *Commerce Union Corporation*, Nashville, Tennessee; to merge with United Citizens Bancshares, Inc., Ashland City, Tennessee, and thereby indirectly acquire United Citizens Bank of Cheatham County, Ashland City, Tennessee.

3. *Southeastern Bancshares, Inc.*, Nashville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Quality Financial Services Corporation, Alexandria, Tennessee, and thereby indirectly acquire Dekalb County Bank & Trust Company, Alexandria, Tennessee.

4. *Straz Investment Company, Inc.*, Belleair Shore, Florida; to become a bank holding company by acquiring 51 percent of the voting shares of First Gulf Bank, Gulfport, Florida, a *de novo* bank. Comments on this application must be received by March 13, 1987.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Sheboygan, Wisconsin; to acquire 100 percent of the voting shares of State Bank of Green Valley, Green Valley, Wisconsin. Comments on this application must be received by March 11, 1987.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Belle Fourche Bancshares, Inc.*, Belle Fourche, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank & Trust Company, Belle Fourche, South Dakota. Comments on this application must be received by March 17, 1987.

Board of Governors of the Federal Reserve System, February 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3791 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

The Chase Manhattan Corp. et al.; Acquisition of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 255.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR § 255.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 11, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York, to acquire Freedom Mortgage Company, Tampa, Florida, and thereby engage in making and servicing mortgage loans pursuant to § 225.25(b)(8) of the Board's Regulation Y.

b. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Draper Holding Company, Inc.*, Draper, South Dakota; to acquire First Insurance—Presho, Presho, South Dakota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Presho, South Dakota, and surrounding areas within Lyman County.

2. *Draper Holding Company, Inc.*, Draper, South Dakota; to acquire Hayes Insurance Agency, Draper, South Dakota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Draper, South Dakota.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *RCB Corporation*, Sacramento, California; to engage through its subsidiary, River City Money Management Company, Sacramento, California, in investment and financial advising pursuant to § 225.25(b)(4) of the Board's Regulation Y. Applicant proposes to engage in this activity through a joint venture with Alex Brown Financial Group.

Board of Governors of the Federal Reserve System, February 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3792 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

Marine Midland Banks, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Marine Midland Banks, Inc.*, Buffalo, New York, The Hong Kong and Shanghai Banking Corporation, Hong Kong, HSBC Holdings B.V., Amsterdam, Amsterdam, The Netherlands, and Kellett N.V., Curacao, Netherlands Antilles; to engage *de novo* through its subsidiary, Marmid Life Insurance Company, in underwriting, as reinsurer, of home mortgage redemption insurance on a nationwide basis pursunt to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Forestwood Financial Corporation*, Dallas, Texas; to engage *de novo* through its subsidiary, Independent Credit Consultants, Inc. Dallas, Texas, a *de novo* company, in providing bank management consulting services in area of operations, systems, and procedures to non-affiliated depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3793 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

[Docket Nos. R–0587, R–0588, R–0589, R–0590, and R–0591]

Requests for Comments on Proposals Regarding Payment System Risks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of comment periods.

SUMMARY: On December 10, 1986, the Board requested public comment on a series of six proposals to reduce and control payment system risks. (The notices were published in the **Federal Register** on December 16, 1986.) Comments on four of these proposals, risks associated with book-entry securities transfers (Docket No. R–0587, 51 FR 45046), reduction of existing levels for net debit caps (Docket No. R–0588, 51 FR 45050), adoption of a new, "*de minimis*" cap category (Docket No. R–0589 [1] 51 FR 45053), and adopting limits on inter-affiliate Fedwire transfers (Docket No. R–0590, 51 FR 45054), were due by February 9, 1987, and the Secretary to the Board, acting pursuant to delegated authority from the Board, recently extended the comment period for each of these four proposals until February 27, 1987. 52 FR 2296 (Jan. 21, 1987). In response to further requests from the public, the Secretary has extended the comment period on these four proposals and has also extended the time for filing comments on the proposals on automated clearing houses (Docket No. R–0591; 51 FR 45043) to April 3, 1987. The time for filing comments on the remaining proposal (pricing of Fedwire daylight overdrafts, R–0592, 51 FR 45052) remains April 13, 1987.

DATE: Comments must be received by April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202–4523–368), or Joseph R. Alexander, Senior Attorney, Legal Division (202–452–2489); or, for the hearing impaired *only*: Telecommunications Device for the Deaf (202–452–3544), Earnestine Hill or Dorothea Thompson.

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), February 17, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–3812 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

[1] A typographical error in the December 16, 1986, **Federal Register** misidentified Docket No. R–0589 as Docket No. R–05891.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Advisory Committee for Elimination of Tuberculosis; Establishment

ACTION: Notice of Establishment—Advisory Committee for Elimination of Tuberculosis.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control announces the establishment by the Secretary of Health and Human Services, on February 4, 1987, of the following Federal advisory committee:

Designation: Advisory Committee for elimination of Tuberculosis.

Purpose: This Committee will advise and make recommendations to the Secretary, the Assistant Secretary for Health, and the Director, Centers for Disease Control, regarding feasible goals for eliminating tuberculosis. The Committee will make recommendations regarding policies, strategies, objectives, and priorities; address the development of new technologies and their subsequent application; and review progress toward elimination.

Authority for this Committee will expire February 4, 1989, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: February 18, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–3802 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Allergenic Products Advisory Committee

Date, time, and place. March 12 and 13, 1987, 8:30 a.m., Rm. 121, Bldg. 29, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 12, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m.; closed committee discussion, March 13, 9 a.m. to 4 p.m.; Clay Sisk, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695 or 443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational allergenic biological products administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The open meeting will be devoted to the review of the intramural research programs of the Laboratory of Allergenic Products, Division of Bacterial Products, Office ot Biologics Research and Review (OBRR), Center for Drugs and Biologics, Food and Drug Administration. The work of the individual scientists in the Laboratory will be presented.

Closed committee discussion. The committee will review part of the intramural research program in the Office of Biologics Research and Review. This session of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with this research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee may also review trade secret and/or confidential commercial information relevant to pending license applications and investigational new drugs (IND's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. March 27, 8:30 a.m., Rms. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 13, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for an external dual chamber pacemaker and prosthetic heart valves.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or

confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 17, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–3797 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86B–0058]

Anesthesia Apparatus Checkout Recommendations; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Anesthesia Apparatus Checkout Recommendations" prepared by FDA's Center for Devices and Radiological Health (CDRH). The recommendations present a general checkout and inspection procedure designed to be performed daily by anesthesia professionals to ensure that the anesthesia gas machine, patient breathing system, monitors, and other apparatus, which together comprise the anesthesia gas delivery system, are correctly interconnected, adjusted, and functioning as intended.

ADDRESS: Written requests for single copies of the recommendations should be addressed to the contact person below. The recommendations are also available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter B. Carstensen, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

SUPPLEMENTARY INFORMATION: FDA, through CDRH, develops and carries out a national program to ensure the safety and effectiveness of medical devices. One aspect of this program involves regulatory activity under the laws administered by the agency concerning the design, manufacture, and distribution of medical devices. CDRH recognizes, however, that patient safety is dependent on more than properly functioning devices. Proper operation, maintenance, and periodic inspection of these devices by the user, matters that do not ordinarily involve direct regulatory action under the laws administered by the agency, are essential to minimize associated patient risks. Consequently, as an important adjunct to its regulatory program, CDRH conducts a variety of educational efforts to aid medical professionals in the safe use of medical devices. These educational endeavors are done in cooperation with, and usually done with the active participation of, the relevant professional organizations and other groups within the private sector.

For example, to reduce unnecessary retakes in radiology and improve image quality, CDRH developed, in cooperation with the American College of Radiology and other private sector organizations, voluntary recommendations for radiology facilities concerning equipment quality assurance programs (A Basic Quality Assurance Program for Small Diagnostic Radiology Facilities, FDA 83–8218). In cooperation with the American College of Radiology and numerous other medical professional societies, CDRH fostered the development of guides for clinicians on the effective use of selected diagnostic imaging procedures (The Selection of Patients for X-ray Examinations, FDA 80–8104; The Selection of Patients for X–ray Examinations: The Pelvimetry Examination, FDA 81–8174; The Selection of Patients for X-ray Examinations: Chest X-ray Screening Examinations, FDA 83–8204). As an adjunct to the teaching of medical students and radiology residents, CDRH funded the development of a basic teaching system in radiology (the Radiological Health Sciences Learning File), which is now a staple for radiology education used in 118 medical schools in the United States and several foreign schools as well. These examples illustrate CDRH's commitment to promote the principle that users of medical devices need to be sufficiently educated and motivated to use the devices safely and effectively.

There is mounting evidence and increased urging from the anesthesia community that a routine preuse inspection of anesthesia apparatus would improve patient safety. Several articles and at least one text published in recent years (Refs. 1 and 2) indicate that many patient deaths and serious injuries associated with the administration of gaseous anesthesia could be avoided if an adequate inspection and functional check of the equipment were performed by the anesthetist just before use of the equipment on the patient.

Operating manuals currently supplied with anesthesia gas machines include certain recommended procedures for inspection and functional checking of the equipment. In past years the manuals may not have provided adequate instructions for checking the complete anesthesia system. Also, in many hospitals the original operating manuals can no longer be found or are no longer relevant due to equipment modification made by owners over the years.

A generic checkout procedure for anesthesia gas delivery systems has been developed by CDRH staff with the

cooperative efforts of anesthetists, biomedical engineers expert in anesthesia equipment, and representatives of manufacturers of anesthesia gas machines. This procedure is contained in a document entitled "Anesthesia Apparatus Checkout Recommendations." The document is intended to provide the anesthetists with a general procedure to aid in the daily inspection and functional checking of the equipment before using it on patients.

The Anesthesiology and Respiratory Therapy Devices Panel, an FDA advisory committee, reviewed the draft recommendations during its scheduled meeting on November 22, 1985. The Panel agreed that there is a need for guidance such as that contained in the checklist and suggested several minor revisions to the draft document which were incorporated into it.

In the **Federal Register** of March 28, 1986 (51 FR 10673), FDA published a notice of availability of the draft Anesthesia Apparatus Checkout Recommendations (Ref. 3). Sixteen comments were received and reviewed. Some minor refinements were made to the checkout recommendations in response to the comments. Single copies of the comments and their analyses are available upon written request to the contact person above.

FDA believes that the inspection procedure provided in the checkout recommendations, dated August 1986, will aid medical professionals in the safe use of anesthesia devices. FDA regards the inspection procedure to be "recommendations" as defined in the agency's regulations. Therefore, the checklist is being made available under 21 CFR 10.90(c) of the agency's administrative practices and procedures regulations. That regulation provides for FDA to formulate and disseminate recommendations about matters that are authorized by, but do not involve direct regulatory action under, the laws administered by the agency.

FDA is making available to the public the Anesthesia Apparatus Checkout Recommendations and intends to make them available to anesthesia clinicians through their professional organizations and to the anesthesia equipment manufacturers so they may include them in their own user education programs.

References

Copies of the checkout recommendations, comments received on the draft recommendations, FDA's analyses of the comments received, and the following references are on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cooper, J.B., et al., "An Analysis of Major Errors and Equipment Failures in Anesthesia Management: Consideration for Prevention and Detention," *Anesthesiology*, 60:34–42, 1984.

2. Dorsch, J.A., and S.E. Dorsch, "Understanding Anesthesia Equipment: Construction, Care, and Complications," 2d Ed., Baltimore/London, Williams and Wilkins, 1984, Chapters 10 and 14.

3. "Anesthesia Apparatus Checkout Draft Recommendations; Availability," Federal Register/Vol. 51, No. 60/Friday, March 28, 1986/Notices, pp. 10673–10674.

Interested persons may at any time submit to the Dockets Management Branch (address above) written comments regarding the recommendations identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments to or revisions of the recommendations are warranted. Two copies of comments are to be submitted (except that individuals may submit single copies). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–3798 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87M–0009]

Arzco Medical Electronics, Inc.; Premarket Approval of the Arzco Transesophageal Cardiac Stimulator Model 7

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Arzco Medical Electronics, Inc., Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the Arzco Transesophageal Cardiac Stimulator Model 7. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE:. Petitions for administrative review by March 27, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Springr MD 20910, 301–427–7594.

SUPPLEMENTARY INFORMATION: On June 23, 1986, Arzco Medical Electronics, Inc., Chicago, IL 60616, submitted to CDRH an application for premarket approval of the Arzco Transesophageal Cardiac Stimulator Model 7. The Arzco Transesophageal Cardiac Stimulator Model 7 is indicated for (1) The termination of supraventricular tachycardia (atrial flutter and reentrant atrial or atrioventricular paroxysmal tachycardias) in children via an esophageal catheter electrode; and (2) the acceleration of heart rate in adults via a pill-electrode as an alternative to exercise during diagnostic studies such as echocardiography or radionuclide ventriculography.

On October 24, 1986, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Doris Terry (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR

10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the person who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 27, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 13, 1987.

John. C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–3795 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87M–0022]

Avery Laboratories, Inc.; Premarket Approval of Diaphragm Pacer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Avery Laboratories, Inc., Farmingdale, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Diaphragm Pacer. After reviewing the recommendation of the Neurological Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 27, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzner, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7226.

SUPPLEMENTARY INFORMATION: On July 3, 1986, Avery Laboratories, Inc., Farmingdale, NY 11735, submitted to CDRH an application for premarket approval of the Diaphragm Pacer. The device is an implanted diaphragmatic/phrenic nerve stimulator which is classified into class III (premarket approval). In the **Federal Register** of April 8, 1986 (51 FR 12100), FDA issued a final rule (21 CFR 882.5830), pursuant to section 515(b) of the act (21 U.S.C. 360e(b)), to require the filing of premarket approval applications for such devices by July 7, 1986. The Diaphragm Pacer is indicated for persons who require chronic ventilatory support because of upper motor neuron respiratory muscle paralysis or because of central alveolar hypoventilation and whose remaining phrenic nerve, lung, and diaphragm function is sufficient to accommodate electrical stimulation.

On September 8, 1986, the Neurological Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 5, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Rohert F. Munzner (HFZ–430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(R) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 27, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 13, 1987.

John C. Vilforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–3799 Filed 2–23–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[IOA–007–N]

Meeting; Task Force on Long-Term Health Care Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces a meeting of the Task Force on Long-Term Health Care Insurance Policies.

DATE: The meeting will be held on March 26, 1987 from 10:00 a.m. to 4:30 p.m., and on March 27, 1987 from 8:30 a.m. to 3:00 p.m., E.S.T. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Holiday Inn, Baltimore-Washington International Airport, 890 Elkridge Landing Road, Linthicum, Maryland.

FOR FURTHER INFORMATION CONTACT: Dennis DeWitt, 202–245–0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985, will evaluate current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care policies and to help foster consumer confidence in them, the Task Force will develop guidelines that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "lone-term health care policy" means an insurance policy, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care services (such as nursing home care and home health care) or related services (which may include home and community-based services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to: (1) Limit marketing and agent abuse for those policies; (2) assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage; (3) assure that benefits provided under the policies are reasonable in relationship to premiums charged; and (4) promote the development and availability of long-term health care policies that meet these recommendations.

Agenda

Agenda items for the meeting will include Task Force discussion on induced demand; adverse selection; ways to make long-term care insurance more affordable, including vehicles that are tax-based and those that are not; and employer-employee issues.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92–463, as amended (5 U.S.C. App. I, Sec 1–15) and sec. 9601 of Pub. L. 99–272 (42 U.S.C. 1395b note); 45 CFR Part 11)

Dated: February 12, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–3861 Filed 2–24–87; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Health and Allied Health Professions Eligibility for Scholarship Consideration Under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians, and the Indian Health Scholarship Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Health and Allied Health Professions Which Will be Eligible for Scholarship Support under Indian Health Service (IHS) Scholarship Programs.

SUMMARY: The IHS is publishing a list of health and allied health professions for which support under the various scholarship programs administered by the IHS may be available for the 1987/1988 academic year and possibly beyond. Actual awards will be dependent upon the availability of funds. Awards will not be available in health and allied health professional areas not listed. This list will remain in effect until superseded.

DATE: This IHS policy is effective on February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Mr. Larry Thomas, Indian Health Service, Parklawn Building, Room 6–12, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone 301–443–6197. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Programs for Indians are authorized by section 103 of the Indian Health Care Improvement Act, Pub. L. 94–437 as amended by Pub. L. 96–537, Indian Health Care Amendments of 1980. The Indian Health Scholarship Program is authorized by section 338G of the Public Health Service Act. Both programs are intended to encourage Indians to enter the health professions and to assure the availability of Indian health professionals to serve Indians. The list below is based upon the needs of the IHS as well as upon the needs of the Indians for additional service by specific health professions.

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory and Pregraduate Scholarships for Indians and Indian Health Scholarships. Also, section 338G(b)(1) of the Public Health Service Act [42 U.S.C. 254r(b)(1)] authorizes the determination of specific health professions for which Indian Health Scholarships will be awarded.

Pending the availability of funds, consideration will be given to qualified applicants for scholarship support under the above-named scholarship programs in the following health profession categories:

Priority Categories

Health Professions Preparatory Scholarship Program for Indians

A. Pre-Nursing.
B. Pre-Accounting.

Pre-Graduate Program

A. Pre-Medicine: Junior/Senior level only.
B. Pre-Dentistry: Junior/Senior level only.

Indian Health Scholarship Program

A. Medicine; Allopathic and Osteopathic.
B. Nursing: ADN, BSN, and MS Degrees.
C. Pharmacy: Junior/Senior level.
D. Engineering: Civil, Environmental and Mechanical—Junior/Senior level.
E. Dietician/Nutrition: Junior/Senior level.
F. Sanitarian: Environmental Health, Environmental Science, and Occupational Safety and Health—Junior/Senior level.
G. Medical Technologist: BS Degree—Junior/Senior level.
H. Dentistry.
I. Accounting: Junior/Senior level.
J. Health Administration: MS/MA Degree.
K. Statistician: BS/MA Degree—Junior/Senior level.
L. Dental Hygiene: Junior/Senior level.
M. Health Education: Masters level.
N. Chemical Dependency Counseling: Masters level.

Interested individuals are reminded that the list of eligible health and allied

health professions is initially effective for the applicants for the 1987–1988 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

The Health Professions Preparatory and Pregraduate Scholarship Program for Indians is listed as No. 13.971 in the OMB Catalog of Federal Domestic Assistance. The Indian Health Scholarship Program is listed as No. 13.972 in the Catalog.

Dated: February 18, 1987.

David N. Sunwall, M.D.,

Administrator.

[FR Doc. 87–3852 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–87–832; FR–2299]

Delegation of Authority With Respect to the Transitional Housing Demonstration Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: The Transitional Housing Demonstration Program was authorized by section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided in H.R. 5313, 99th Cong., and 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986). This Notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner the Secretary's power and authority with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice states the scope of authority given to the Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner for the Transitional Housing Demonstration Program. All of the Secretary's authority with respect to this Program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations and guidelines under the Program.

The Transitional Housing Demonstration Program is a new program authorized by Title V of HUD's appropriation for fiscal year 1987. Proposed guidelines for the operation of the program are published elsewhere in today's issue of the **Federal Register.** Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Transitional Housing Demonstration Program as authorized by section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), except as indicated in Section B below. This includes the authority to issue or waive rules, regulations, or guidelines under the Program.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations and guidelines under the Program.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: February 13, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–3762 Filed 2–24–87; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–87–1668; FR–2299]

Transitional Housing Demonstration Program; Proposed Guidelines

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of proposed guidelines.

SUMMARY: This notice announces HUD's proposed guidelines for the operation of the Transitional Housing Demonstration Program contained in HUD's appropriation for fiscal year 1987. The Program is designed to develop innovative approaches to providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable period of time. Under the guidelines, HUD would make assistance available to eligible governmental and private nonprofit entities in the forms of (1) interest-free advances to cover part of the costs of acquiring or rehabilitating (or both) existing structures for use in the provision of housing and supportive services for homeless persons; (2) annual payment of a portion of the operating costs of the housing; and (3) technical assistance to Program recipients in carrying out activities under the Program.

DATE: Comments must be received by March 27, 1987.

ADDRESS: Interested persons are invited to submit comments regarding this notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202)

755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Transitional Housing Demonstration Program

I. Background
II. Procedural Implementation Requirements
III. Transitional Housing Demonstration Program
A. Definitions
B. Types of Assistance
1. Assistance Under the Program
(i) Acquisition/rehabilitation advances.
(ii) Annual payments for operating costs.
(iii) Technical assistance.
2. Commitment of Amounts for Operating Costs
3. Limitations on the Use of Assistance
(i) Funding of existing homeless programs.
(ii) Leases.
(iii) New construction.
(iv) Constitutional limitations on the use of program funds by primarily religious organizations.
4. Assistance Under other HUD Programs
C. Application Process
D. Selection Process
1. Overview
2. Threshold Criteria
(i) Form, time, and adequacy of the application.
(ii) Applicant.
(a) Eligibility to receive assistance.
(b) Financial responsibility.
(c) Capacity.
(d) Legal authority.
(iii) Leveraging.
(iv) Proposed housing and supportive services.
(a) Need.
(b) Adequacy of the proposed supportive services.
(c) Adequacy of the proposed housing.
(d) Siting and zoning.
(e) Consistency with local government plans.
(f) Displacement.
(v) Proposal feasibility.
3. Ranking Criteria
(i) Applicant.
(a) Financial responsibility.
(b) Capacity.
(ii) Innovative quality of proposal.
(iii) Coordination of supportive services.
(iv) Leveraging.
(v) Cost reasonableness.
4. Environmental Review
5. Final Seleciton
E. Program Requirements
1. Required Agreements
(i) Operation of transitional housing.
(ii) Assessments.
(iii) Residential supervisor.
(iv) Use of structure.
(v) State and local requirements.
(vi) Reporting and recordkeeping.
2. Repayment of Advances
3. Resident Rent
4. Funding Amendments and Recaptures
5. Other Federal Requirements
(i) Nondiscrimination and equal opportunity.
(ii) Environmental.
(iii) Applicability of OMB Circulars.
(iv) Lead-based paint.
(v) Conflicts of interest.
(vi) Use of debarred, suspended, or ineligible contractors.
(vii) Audit.
(viii) Intergovernmental review.
F. Waiver
IV. Other Information

I. Background

Title V of HUD's appropriation for fiscal year 1987 [1] established the Homeless Housing Act of 1986 (the Act). The Act created two new programs to assist homeless persons. Part B of Title V contains the Transitional Housing Demonstration Program. Part C contains the Emergency Shelter Grants Program. This notice addresses the Transitional Housing Demonstration Program. (A proposed rule implementing the Emergency Shelter Grants Program was published in the **Federal Register** on December 17, 1986 (51 FR 45277).)

Under the Transitional Housing Demonstration Program, HUD is directed to carry out a program to develop innovative approaches for providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable time. The purposes of the Program are to determine:

—The cost of acquiring or rehabilitating (or both), or leasing, existing structures for the provison of housing for homeless persons;
—The cost of operating the housing and providing supportive services to its residents; and
—The social, financial, and other advantages of the housing and supportive services as a means of assisting homeless persons.

II. Procedural Implementation Requirements

Section 514 of the Act contains procedural requirements governing the implementation of the Program. Section 514(a) directs the Secretary to issue, within 180 days of the Act's enactment, guidelines necesssry to carry out the demonstration. Before issuing these guidelines, section 514(b) directs the Secretary to consult with persons and entities having expertise on the problems and needs of homeless persons or experience in providing housing or supportive services for them. Finally, under section 514(c), all guidelines must be published in the **Federal Register** annually and whenever modified, and their development is made subject to the procedural rulemaking requirements of the Administrative Procedure Act. (5 U.S.C. 551–553.)

In conformance with the advance consultation requirements, HUD program officials conducted several meetings with homeless care providers and other groups and individuals with expertise regarding homeless persons. These meetings were held in Seattle, Washington; San Francisco, California; Atlanta, Georgia; Detroit, Michigan; and Boston, Masssachusetts during the period beginning December 10, 1986 and ending December 16, 1986. Summaries of these meetings and a list of participants have been included in the public comment file and are available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk at the above address.

Interested parties that were not contacted during the advance consultation procedure will have an opportunity to participate in the development of the final guidelines. In accordance with section 514, HUD is publishing this notice of proposed guidelines in the **Federal Register**, will permit the public to comment on them for a 30-day period following publication, and will publish final guidelines in the **Federal Register** no later than April 16, 1987. Interested parties with expertise or experience in matters concerning homeless persons, as well as all other members of the public, are encouraged to participate in this process.

III. Transitional Housing Demonstration Program

A. Definitions

The following definitions would apply to the Program:

Applicant means any governmental or private nonprofit entity that submits an application for assistance under the Program. Governmental entities include those that have general governmental powers, such as a city or county, as well as those that have limited or special purpose powers, such as public housing agencies.

Homeless person means an individual or family which does not have access to either traditional or permanent housing, but which is capable of living independently within a reasonable amount of time, not to exceed 18 months.

Housing for homeless persons means a structure that is suitable for the provision of housing and supportive

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

services for homeless persons in an appropriate group setting. Some or all supportive services may be provided by arrangements with other service providers at facilities outside the structure.

HUD means the Department of Housing and Urban Development.

Operating costs means expenses that a recipient operating transitional housing incurs for:

(a) The administration, maintenance, minor or routine repair, and security of the housing;

(b) Utilities, fuels, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments (see paragraph E.1.(ii) of this section, below); and

(d) The provision of supportive services to the residents of the housing.

Private nonprofit entity means a secular or religious organization described in section 501(c) of the Internal Revenue Code that:

(a) Has a currently effective tax exemption ruling issued by the Internal Revenue Service under section 501(c) of the Internal Revenue Code;

(b) Has a functioning accounting system that is operated in accordance with generally accepted accounting principles;

(c) Has a voluntary board; and

(d) Practices nondiscrimination in the provision of assistance under this Program, in accordance with the authorities described in paragraph E.5.(i) of this section, below.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD for assistance under the Program.

Rehabilitation means labor, materials, tools, and other costs of improving structures to a level that, at a minimum, meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing structures; installation of security devices; and improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

Supportive services means:

(a) Assistance in obtaining permanent housing;

(b) Medical and psychological counseling and supervision;

(c) Employment counseling;

(d) Nutritional counseling;

(e) Assistance in obtaining other Federal, State, and local assistance available for residents of transitional housing, including mental health benefits; employment counseling; medical assistance; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(f) Other services proposed by the applicant in its application and approved by HUD, that are essential for maintaining independent living and that address the needs of the homeless persons served by the recipient. Such services might include child care, transportation, job placement, and job training.

Transitional housing means a program assisted under the demonstration (a) that provides housing and supportive services for homeless persons and (b) that has as its purpose facilitating the movement of homeless persons to independent living within a reasonable amount of time, not to exceed 18 months for any homeless person. All or part of the supportive services in transitional housing may be provided directly by the recipient or by arrangements with other public or private service providers. (See paragraphs D.2.(iv)(b) and D.3.(iii) of this section, below.)

B. Types of Assistance

1. Assistance Under the Program

HUD is authorized to provide three types of assistance under the Program: acquisition/rehabilitation advances, annual payments for operating costs, and technical assistance. This paragraph discusses the types of assistance available under the Program. Depending upon their proposed activities and the availability of other sources of funding, applicants may request both an acquisition/rehabilitation advance and operating cost payments, or they may seek only one of these types of assistance. HUD would make technical assistance available only in conjunction with the award of funds under the Program.

The three types of Program assistance would be:

(i) *Acquisition/rehabilitation advances.* HUD would advance sums to recipients to help defray the cost of acquiring or rehabilitating (or both) an existing structure selected by the recipient for use as transitional housing. Advances could not exceed the lesser of $200,000 or 50 percent of the aggregate acquisition/rehabilitation costs. Advances would be interest-free and, if certain conditions are met, would not be repayable. (For the rules governing repayment of advances, see paragraph E.2. of this section, below.) As noted above, HUD would limit advances to a maximum 50 percent of the costs involved; the recipient would have to make up the other half with funds from other sources. This matching requirement reflects HUD's belief in the importance of using Program funds to leverage at least an equal amount of funds from other sources. (For a full discussion of the leveraging concept, see paragraph D.2.(iii) of this section, below.)

(ii) *Annual payments for operating costs.* HUD would make annual payments of up to 50 percent of the operating costs (which include supportive services) for transitional housing. The 50 percent maximum reflects HUD's belief in the need to use Program funds to leverage at least equal amounts from other sources. (See the immediately preceding paragraph for the leveraging requirement for acquisition/rehabilitation advances and paragraph D.2.(iii) of this section, below, for a discussion of the leveraging concept.)

(iii) *Technical assistance.* Technical assistance would be offered to recipients through HUD field office staff in such matters as the computation of resident rent (see paragraph E.3. of this section, below), compliance with Federal requirements (see paragraph E.5. of this section, below), the availability of Federal housing assistance to residents upon their departure from transitional housing (see paragaprh B.4. of this section, below), and engineering and other advice on rehabilitation plans and work write-ups. HUD would also facilitate the exchange of information among recipients, and help recipients to learn from the experience of other recipients.

2. Commitment of Amounts for Operating Costs

Upon approval of an application requesting operating cost assistance, HUD would obligate amounts for the period sought, not to exceed five years. Each year, up to five years, HUD would make operating cost payments to the recipient from the amounts obligated.

The Department believes that the five-year period strikes an appropriate balance among a number of competing considerations. The five-year term coincides with the minimum period under the Act for which a recipient must agree to use a structure for transitional housing. The five-year term would ensure that recipients have a steady

stream of income to help them meet their responsibilities for the full period for which they are obligated to HUD to operate transitional housing under the Program.

Obligating funds for a period in excess of five years could inappropriately constrict the number of homeless persons that the Program could serve and result in too few recipients to permit a demonstration of adequate size to yield meaningful results. Obligating funds for a shorter period (*e.g.*, one year) could make recipients' ability to meet the statutory five-year operating requirement too dependent on their success in locating alternative funding sources during the initial stages of operation—the time when, without a proven track record, attracting new funding would be generally the most difficult. Failure to obtain alternate funding could jeopardize operation of the transitional housing, thus frustrating the Program's objectives.

As noted in paragraph E.2. of this section (below), HUD would waive repayment of an acquisition/rehabilitation advance if the recipient continues to operate transitional housing in accordance with the Program's requirements for 10 years, or if HUD approves the use of the structure for another charitable purpose for the rest of the 10-year period. Failure to meet these provisions would require repayment of the full amount of the advance.

The Department recognizes that the use of the five-year period for operating cost assistance may make it more difficult for some recipients to meet this 10-year operating requirement. The Department does not believe, however, that this is sufficient to compel fund obligation beyond five years. As noted above, the Department believes that a term longer than five years unduly narrows the number of homeless persons served and the scope of the demonstration. In addition, the five-year period provides certain funding during the recipient's start-up period, the succcessful completion of which should make it far easier to attract alternate sources of funding for the remaining years. Even if an applicant cannot continue to operate transitional housing under the Program, it may nonetheless avoid repayment of any advance by securing HUD's approval for use of the structure for another charitable purpose.

3. Limitations on the Use of Assistance

(i) *Funding of existing homeless programs.* HUD would not generally provide any acquisition/rehabilitation advances or annual operating costs payments for existing facilities or programs that serve homeless persons. Funding could be provided, however, if an applicant operating existing homeless facilities proposes to use Program funds to substantially increase the number of homeless persons for whom transitional housing would be provided, or to substantially increase the level of supportive services to be provided to homeless persons. Funding also could be provided if the applicant proposes a substantial change in the use of the existing facilities: *e.g.*, if existing facilities that are not currently used for transitional housing (such as an emergency shelter for the homeless) would be used to provide transitional housing, or if an applicant currently providing transitional housing proposes to serve an additional or alternative segment of the homeless population.

If such an applicant is selected for funding, HUD would make assistance available only for the increased operating costs and increased cost of acquisition/rehabilitation attributable to the increased number of homeless persons for whom transitional housing would be provided, the increased level of supportive services to be provided, or the change in use. Consistent with the leveraging requirement in paragraph D.2.(ii) of this section, below, the amount of HUD assistance would be limited to 50 percent of the increased operating costs or increased cost of acquisition/rehabilitation.

(ii) *Leases.* Acquisition/rehabilitation advances would not be available to help defray the costs of acquiring a lease on existing property. Advances would, however, be available for the rehabilitation of leased property, if the lease runs for a term of at least 10 years after the date of initial occupancy of the housing. Although the expenses of acquiring a leasehold interest would not be eligible for an acquisition/rehabilitation advance, rental payments under a lease would be an allowable operating expense, and HUD would permit the inclusion of these expenses in the computation of the annual operating cost payment.

(iii) *New construction.* Assistance under the Program is limited to the acquisition or rehabilitation (or both) of existing structures. Assistance, may not be used for the new construction of housing for homeless persons.

(iv) *Constitutional limitations on the use of program funds by primarily religious organizations.* The definition of private nonprofit entities would include religious organizations that qualify under section 501(c) of the Internal Revenue Code and that meet certain specified criteria. (See paragraph A. of this section, above)

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion." In accordance with this constitutional principle, the Supreme Court has directed that statutes affording public assistance must have a primary effect that neither advances nor inhibits religion. (See *Lemon* v. *Kurtzman*, 403 U.S. 603 (1971). In *Hunt* v. *McNair*, the Court stated:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting." (413 U.S. 734, 742 (1973))

Thus, determining constitutional compliance requires an examination of the extent to which religion pervades an entity's functions. In addressing this issue, Justice Blackmun, speaking for the majority in *Roemer* v. *Maryland Public Works Board*, declared:

> To answer the question whether an institution is so 'pervasively sectarian' that it may receive no direct State aid of any kind, it is necessary to paint a general picture of the institution. (426 U.S. 736, 738 (1976))

In accordance with these principles, HUD does not propose to provide acquisition/rehabilitation advances for existing structures to be owned or leased by pervasively sectarian organizations. While structures to be owned or leased by churches clearly may not receive advances, not all section 501(c) tax-exempt organizations would fall within the pervasively sectarian classification, even though they may be church-related or have certain religious affiliations or purposes. Determinations in this regard would generally turn on the extent to which religion is infused in the organization's functions, as reflected in its charter, by-laws, publications, or other evidence related to its stated purposes, organization, control, membership, and operations, including the nature of, and eligibility for participation in, the activities, services, and benefits it provides.

In addition, pervasively sectarian organizations may establish independent nonprofit entities to provide transitional housing under the Program. This approach, like that used in the Department's administration of the section 202 loan program for the elderly and handicapped, makes possible all forms of assistance under the demonstration for structures owned

by such independent nonprofit entities. Finally, it should be understood that this notice would not prohibit HUD from providing *operating cost payments* to private nonprofit entities—including those determined to be pervasively sectarian—if the provision of housing and supportive services would be carried out in a manner free from religious influences and in accordance with conditions prescribed in the grant agreement.

As noted above, a pervasively sectarian organization may establish an independent private nonprofit entity to provide transitional housing under the Program. Because the formation of such an independent entity may be time consuming, costly, and unnecessary if the application is not ultimately selected for funding, HUD would not require the formation of the independent entity before such a proposal is selected. Under these limited circumstances, the pervasively sectarian organization would be permitted to apply on behalf of the independent entity. The application would be reviewed on the basis of the pervasively sectarian organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the independent entity after formation. (See paragraphs D.2.(ii)(b) and (c), and paragraphs D.3.(i) (a) and (b) of this section, below.) Additionally, the pervasively sectarian organization would be required to demonstrate site control under paragraph D.2.(iv)(d) of this section, below, and a commitment to transfer control of the site to the independent entity after formation. Since the independent entity would not be in existence at the time of the application, it would be permitted to demonstrate that it meets the definition of private nonprofit entity and has the appropriate legal authority to participate in the Program, following selection. (See paragraphs D.2.(ii)(a) and (d) of this section, below.) Where such an independent entity is selected for funding HUD would condition the obligation of funds upon the completion of these requirements.

4. Assistance Under Other HUD Programs.

As noted earlier (paragraph B.1.(iii) of this section), as a part of its technical assistance under the Program, HUD would provide recipients with information concerning the availability of Federal housing assistance for residents upon their departure from transitional housing. HUD also intends to provide housing vouchers under section 8(o) of the United States Housing Act of 1937 for income-eligible homeless persons upon their departure from transitional housing, if such assistance can be made available through local public housing agencies participating in the Voucher Program and there is adequate funding authority for this purpose. Use of housing vouchers in connection with the Program is designed to help very low-income graduates of transitional housing achieve and maintain independent living by making their rental payments more affordable.

Additionally, HUD is considering offering applicants an opportunity to obtain HUD-owned single family properties for use as transitional housing through the Department's Single Family Property Disposition Program.

C. Application Process

HUD intends to develop an application package prescribing the specific information that applicants for assistance under the Program must submit. The application package would be available at the same time as the issuance of the final guidelines for the Program—no later than April 16, 1987—and would be provided upon the written request of any party.

The application package would require submission of a narrative description of the applicant's transitional housing proposal. The narrative should address each programmatic aspect of the applicant's proposed activities in establishing and operating transitional housing in conformance with HUD's guidelines. This narrative statement should describe such matters as the applicant's proposed procedures for the selection of residents and the preparation of residential assessments, and should describe how the applicant proposes to provide or coordinate the provision of supportive services to the residents. With regard to the selection of residents, applicants may submit, and HUD may approve, proposals for transitional housing that would serve certain designated populations of homeless persons. Such designated populations may include the chronically mentally ill, the victims of domestic violence, families with children, the unemployed, and runaway children, or appropriate combinations of designated populations of homeless persons.

Applicants would also have to specify each financial aspect of the proposed activities for the proposed term of the applicant's commitment to HUD, including the proposed amounts, sources, and uses of funding for the applicant's program, and the proposed amounts and uses of assistance requested from HUD. Other application material would include (1) an analysis of the supportive services required by the homeless persons to be served; (2) copies of balance sheets and statements of income and expenses for each of the past three years for which the applicant has been in operation or if the applicant has operated for less than three years, this information for its actual period of operation; and (3) such other information as HUD may require to make funding selections. (See paragraph D. of this section, below.)

The application package would announce deadlines for completed applications and timeframes for HUD selections. Currently, HUD intends to require applicants to file completed applications eight weeks after HUD issues final guidelines for the Program. (Final guidelines are due by April 16, 1987.)

Potential applicants should note that it may take some time to fulfill certain application requirements and to assemble a complete application. For example, under paragraph D.2 of this section, below, HUD would impose certain leveraging, zoning, site control, historic preservation, and other requirements that applicants may not be able to meet if they take no action on them until the issuance of final guidelines. Accordingly, potential applicants would be well advised to consider taking some initial steps in the preparation of their applications as soon as possible.

HUD headquarters would process all applications and select the successful applicants. HUD would make its final selections and obligate funds as soon as the applications can be processed. In no event would the selection process and the obligation of funds be completed later than the end of fiscal year 1987.

D. Selection Process

1. Overview

The selection process would have four stages. In the first stage, HUD would determine if an application meets the threshold criteria discussed in paragraph D.2. of this section, below. An application that does not meet all the threshold criteria would not advance to the next stage, and would not be eligible for funding under the Program.

Applications that meet each of the threshold criteria would advance to the ranking stage. HUD would evaluate each application under the ranking criteria described in paragraph D.3. of this section, below, and would rank all applications in priority order on the basis of the overall points awarded them on the ranking factors.

After the completion of the ranking in the second stage, a number of highest ranked applications would be passed on to the third stage for compliance review in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Environmental reviews would not be performed on all applications ranked under the second stage. Rather, HUD would only review the number of highest rated applications that it determines necessary to ensure an adequate pool of applications for the final selection process. Applications that do not move to this third stage of processing would not be selected for funding. In this third stage, any application that would require the preparation of an environmental impact statement (EIS) would be ineligible for funding. Additionally, HUD may make adjustments to the rating scores based on the results of the environmental review.

In the fourth stage, HUD would consider for final selection the applications that advance from the third stage review, with any rating adjustment made on the basis of the environmental review performed at that stage. HUD would find the highest rated applications, but would reserve the right to fund other applications that successfully completed the third stage, if necessary to ensure reasonable diversity in the demonstration, as discussed in more detail in paragraph D.5. of this section, below.

2. Threshold Criteria

Applicants would be required to meet each of the following threshold criteria (as modified for independent private nonprofit entities to be established by pervasively sectarian organizations under paragraph B.3. (iv) of this section, above):

(i) *Form, time, and adequacy of the application.* The application must be filed in the form and within the time periods established by HUD, include all the required elements, and contain evidence or information sufficient to support each of its elements.

(ii) *Applicant*—(a) *Eligibility to receive assistance.* The applicant would be required to demonstrate that it meets the definition of a governmental or private nonprofit entity (as defined in paragraph A. of this section, above).

(b) *Financial responsibility.* The applicant must demonstrate that it is financially responsible. To show financial responsibility, applicants would be required to demonstrate that they will be able to establish and operate the proposed transitional housing for the term of their commitment to HUD with the finances that are, or are reasonably expected to be, available to them. In making this determination, HUD would consider to be, available to them. In making this determination, HUD would consider factors such as the past financial history of the applicant; its current and anticipated financial outlook; the amount of funding that would be committed under the proposal; and the applicant's other financial responsibilities. (This factor is also a ranking criterion (see paragraph D.3.(i)(a) of this section, below).)

(c) *Capacity.* The applicant must demonstrate that it has the ability to carry out activities under the Program within a reasonable time after execution of the grant agreement with HUD and in a successful manner. In making this determination, HUD would consider the extent and quality of the applicant's past experience in establishing and operating housing for homeless persons and in providing or coordinating supportive services for its residents. (If the applicant does not have direct experience with these activities, HUD would consider the extent and quality of the applicant's activities in other areas that the applicant demonstrates are relevant to successful development and operation of transitional housing.) HUD would also consider the ability of the applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of transitional housing. (This factor is also a ranking criterion under paragraph D.3.(i)(b), below.)

In the event that HUD receives appropriations for this program in the future, the capacity of an applicant that has received previous funding would also be determined based upon its performance in meeting the goals of the Program and the objectives of its original application.

(d) *Legal authority.* (1) Applicants would be required to demonstrate that they have the appropriate legal authority to participate in the Program and to carry out activities in accordance with Program requirements and the requirements of other applicable Federal law.

(2) In addition, each applicant would have to submit a resolution, motion, or similar action that has been duly adopted or passed as an official act by its governing body, authorizing the submission of an application under the Program and the establishment and operation of the proposed transitional housing if HUD selects it for funding.

(iii) *Leveraging.* To ensure recipients' commitment to the provision of transitional housing and to ensure that the most effective use is made of the limited funds available for this demonstration, HUD proposes to require that each recipient match the amount of the acquisition/rehabilitation advance and operating cost payments to be provided under the Program with at least an equal amount of funds from other sources.

To be accepted for consideration, the applicant must provide appropriate documentation indicating the sources and amounts of the applicant's leveraging contribution. If the source of the applicant's contribution would be an entity other than the applicant (such as funding provided through State or local agencies), HUD must find the documentation sufficient to demonstrate a commitment to provide the funds if the application is selected under the Program.

Recipients would have to meet this matching requirement for *each* category of assistance received. Thus, the most HUD would make available for acquisition/rehabilitation advances or operating cost payments would be 50 percent of their *respective* costs. Since, as noted earlier, technical assistance would be furnished by HUD staff, no match would be required for that category of assistance.

To satisfy the leveraging requirement, recipients would be required to commit *new* funds. If the HUD assistance is requested for funding of existing programs described in paragraph B.3.(i) of this section, above, the resources necessary to maintain and operate the program *at its current level* would be excluded from the leveraging calculation. The following example illustrates this requirement. An applicant submits a request for annual payments of operating costs. It currently operates transitional housing that has a capacity to serve 10 homeless persons and has annual operating costs of $100,000. If the applicant proposes no increase in the level of supportive services provided or the number of homeless persons served, it would not be eligible for operating cost funding under the Program. (See paragraph B.3.(i) of this section, above.) If, however, the applicant proposes to provide *additional* supportive services for the 10 homeless persons and these services will increase annual operating costs to $150,000, $25,000 (the $50,000 increase in operating costs times the 50 percent leveraging requirement) would be eligible for funding. The applicant would be required to demonstrate that it

could provide its leveraging ($25,000) from resources in addition to those already committed to its existing program.

Participants in the advance field consultations urged HUD to include the value of "in kind" contributions (e.g., materials, buildings, and volunteer services) in calculating the recipient's leveraging contribution. Because accurate valuation of "in-kind" contributions is difficult, HUD is proposing to exclude all "in-kind" contributions from the leveraging calculation, except "in-kind" contributions of structures to be used for transitional housing.

HUD, however, would permit only limited use of the value of donated structures in the leveraging computation. If an applicant is donated an *ownership* interest in a structure, HUD would permit the applicant to use the fair market value of its interest in the structure as its contribution only for the *acquisition/rehabilitation advance*. If the applicant if given a *leasehold* interest in a structure, the Department would permit the applicant to use the fair rental value of the structure as its leveraging contribution only for the *annual payment of operating costs*. Under no circumstances would the value of a structure in which an applicant is given an ownership interest be used to compute the applicant's leveraging contribution for operating costs, or would the value of a structure in which an applicant is given a leasehold interest be used to compute the value of the applicant's leveraging contribution for an advance. To be accepted for consideration by the Department, the applicant must support the fair market value or fair rental value of a structure with an appraisal prepared by a qualified real estate appraiser.

Under the proposed guidelines, applicants' matching contributions may come from any source. HUD, however, would encourage applicants to meet their matching requirement with funds other than those provided through other federally assisted programs, and is considering imposing such a requirement in the final guidelines.

Rental amounts paid by residents of transitional housing under paragraph E.3. of this section, below, could be included in the leveraging calculation of the annual payment of operating costs, if the rental amounts can be substantiated. An applicant would be permitted to substantiate rental amounts based on the rental income experience of the applicant or others in providing transitional housing or other assistance for homeless persons, modified to reflect the rental income calculation requirements of paragraph E.3. of this Section. Additionally, the applicant's substantiation should take into account the length of time necessary for homeless persons to qualify for Federal, State, or local income support assistance or to obtain employment, and any other factors that may reasonably be expected to affect the amount and timing of resident income.

(This factor is also a ranking criterion (see paragraph D.3.(iv) of this section, below)

(iv) *Proposed housing and supportive services*—(a) *Need*. Applicants would be required to demonstrate that an unmet need for the proposed transitional housing exists in the area to be served and that this need is likely to continue through the term of the applicant's commitment to HUD. Need may be demonstrated by information such as (1) estimates, based on past experience in the community, of unmet demand for the proposed transitional housing by the homeless population to be served; (2) present need for the proposed transitional housing, based on estimates of the homeless population to be served; or (3) projections of future need for the proposed transitional housing.

(b) *Adequacy of the proposed supportive services*. HUD does not propose to prescribe minimum supportive service requirements. Applicants would have to show, however, that the supportive services proposed (including the proposed job requirements of the residential supervisor (paragraph E.1.(iii) of this section, below)) would appropriately address the needs of the homeless population to be served, and would be sufficient to facilitate the movement of the homeless persons to appropriate permanent housing and independent living. In determining the adequacy of proposed services, HUD would assess both the supportive services to be provided to the residents of the transitional housing through the applicant and those to be provided through other private and public organizations. Where services are to be provided through other private and public organizations, the applicant must secure a letter of intent from each organization, indicating its willingness and ability to provide the services to the residents of the housing, and must attach these letters to the application.

(c) *Adequacy of the proposed housing*. Except for the siting and zoning requirements discussed in the next paragraph (paragraph (d)), HUD does not intend to impose any specific structure, design, or siting requirements for proposed transitional housing. Applicants would have to show, however, that the proposed structure and site are appropriate for (1) the provision of housing and supportive services in a suitable group setting and (2) the homeless population to be served by the applicant.

Recipients are encouraged to arrange for the provision of all or part of the proposed supportive services outside the proposed transitional housing, if the services are readily accessible to the homeless population to be served. Services would be considered to be readily accessible if residents can get to the services on their own or if transportation is provided to the site where the services are provided. Accordingly, when determining whether a structure will be suitable for the provision of supportive services, HUD will consider whether the structure is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible from the housing. (The provision of supportive services outside transitional housing is also a ranking criterion. See paragraph D.3.(iii) of this section, below.)

(d) *Siting and zoning*. To ensure that transitional housing will be available to serve homeless persons as soon as possible after applicant selection, HUD would require applicants to meet the following four siting and zoning requirements.

(1) The applicant must demonstrate that it has control of the site involved. For example, the applicant may demonstrate that it owns or has an option to purchase, or leases or has an option to lease, the structure involved;

(2) The applicant must demonstrate that the proposed use of the site is, at the time of the application, permissible under applicable zoning ordinances and regulations;

(3) The applicant must provide with the application, or within a reasonable time afterwards, a letter from the State Historic Preservation Officer (SHPO) indicating that no acquisition or rehabilitation funded under the Program would involve a property that is listed on the National Register of Historic Places, is eligible for listing on the Register, is located in a historic district, or is immediately adjacent to a property that is listed on the Register; and

(4) The applicant must submit a statement that the proposed transitional housing is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency.

HUD would impose the site control requirement (item (1)) to ensure that the

applicant will be able to proceed with the establishment and operation of the transitional housing at the earliest possible time. Similarly, HUD would impose the remaining three requirements because of our concern, based on experience with other HUD programs, that projects can be delayed for a year or longer waiting for appopriate governmental zoning actions and the resolution of historic preservation and floodplain issues. In a program for homeless persons such as this, HUD believes it is under a mandate to ensure that the assistance reaches its intended beneficiaries as quickly as possible. Indeed, Congress had indicated its clear intention for speedy HUD action by imposing a six-month deadline for the issuance of final program guidelines and by excusing HUD from going through a rulemaking proceeding to implement the Program.

HUD is concerned, however, that a requirement that these siting and zoning requirements must be met at the application stage may be overly restrictive, and may work to exclude some otherwise meritorious applications from further funding consideration. We are, therefore, requesting public comment on the problems associated with requiring these showings at the application stage. Commenters may also address how any alternative system may be formulated, giving due regard to the paramount concern of making the Program's benefits available to homeless persons as quickly as possible.

(e) *Consistency with local government plans.* Applicants would be required to furnish a written statement from the unit of general local government in which the proposed transitional housing is located, indicating that the proposed use of the structure and site for transitional housing is not inconsistent with any plan of the local government that may have an effect on the use of the structure and site for this purpose. This requirement is designed to ensure that Federal funds are not used in ways that conflict with or frustrate the plans and objectives of local government. In order to avoid any unreasonable delay in the application submission, this requirement would be satisfied if the applicant demonstrates that it made a written request to the unit of local government for the statement and received no response within 30 days of the request.

(f) *Displacement.* Each applicant would be required to submit a statement that its proposed activities will not result in the temporary or permanent displacement of any person or entity. HUD believes that a program serving homeless persons should not result in displacement that may increase the homeless population. Thus, HUD would not fund an application that contemplates any permanent or temporary displacement.

(v) *Proposal feasibility.* Applicants would be required to demonstrate that the proposal for transitional housing, when viewed as a whole, is operationally feasible and would provide adequate housing and supportive services to homeless persons to facilitate their transition to independent living within a reasonable time.

3. Ranking Criteria

In the second stage of the selection process, all applications that meet the above threshold requirements would be placed in priority funding order, based upon their scores on the following ranking criteria:

(i) *Applicant.* During the course of HUD's meetings with members of the public (discussed in Section II., above), a number of individuals stressed the paramount importance of an applicant's ability to establish and operate transitional housing. HUD agrees with this view, and intends to give more weight to the ability factor than any other ranking criterion. The elements addressing an applicant's ability are as follows:

(a) *Financial responsibility.* HUD would consider the applicant's relative ability to establish and operate the proposed transitional housing for the term of its commitment to HUD with the finances that are, or are reasonably expected to be, available to it. The factors HUD would consider in making this judgment are discussed in paragraph D.2.(ii)(b) of this section, above.

(b) *Capacity.* HUD would consider the applicant's relative ability to carry out activities under the Program within a reasonable time after execution of the grant agreement with HUD and in a successful manner. The factors HUD would consider in making this judgment are discussed in paragraph D.2.(ii)(c) of this section, above. HUD would assign the greatest number of points under this criterion to applicants that demonstrate, on the basis of prior experience in the provision of transitional housing, the greatest ability to carry out activities under the Program expeditiously and successfully.

(ii) *Innovative quality of proposal.* HUD would consider the innovative quality of the proposal in providing housing and supportive services for homeless persons in a manner that facilitates the transition to independent living. In assessing an application under this factor, HUD would consider the degree to which the applicant demonstrates that:

(1) The proposal would use an approach to transitional housing that is new or unusual in the area to be served by the applicant, and that holds promise of successfully facilitating the transition of homeless persons to independent living; and

(2) The new or unusual approach that the applicant proposes to use would be replicable by others.

(iii) *Coordination of supportive services.* HUD would consider the extent to which the applicant would use other public or private entities to provide appropriate supportive services to the residents of the housing, or has demonstrated that the supportive services that are to be directly provided by the applicant are not available or readily accessible to the residents from another provider. HUD believes that the fullest possible use of the community's resources to provide supportive services is an important aspect of any transitional housing proposal, since it treats homelessness as a community-wide concern and does not establish services that would duplicate those available elsewhere in the community. Thus, HUD would assign the greatest number of points under this element to applications that use outside service providers for all the supportive services proposed. HUD recognizes that there may be situations in which some or all supportive services are not available, or are not readily accessible to the residents of the proposed transitional housing. HUD would not penalize applicants that can show this in their applications.

(iv) *Leveraging.* HUD would consider the extent to which applicants propose to match the amount of assistance to be provided under the Program with more than an equal amount of funds from other sources. Requirements for matching amounts are discussed at paragraph D.2.(iii) of this section, above.

(v) *Cost reasonableness.* HUD would consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing under the Program, and in operating the housing and providing supportive services, are reasonable in relation to the work done and the goods and services purchased. This factor would be designed to ensure that the costs involved are reasonably related to the items and services purchased.

4. Environmental Review

In the third stage of the selection process, HUD would conduct an

environmental review of a number of the highest ranked applications, as ranked under paragraph D.3. above. Environmental reviews would not be performed on all applications ranked under the second stage. Rather, HUD would only review the number of highest rated applications necessary to ensure an adequate pool of applications for the final selection process. Applications that do not move to this third stage of processing would not be selected for funding under the Program.

In conducting the environmental review, HUD would assess the envionmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Envionmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) would not be eligible for funding. HUD bases this proposed requirement on its concern that applications that need an EIS would be unduly delayed while the procedural requirements for the preparation of a final EIS are fulfilled. (See 24 CFR Part 50, Subpart F). As noted in paragraph D.2.iv.(d) of this section, above, HUD believes that Congress clearly intended this Program to be implemented expeditiously to ensure that homeless persons would be benefitted as quickly as possible. HUD does not anticipate that many applications would be found to be ineligible for funding based on the need to prepare an EIS.

As a related matter, as a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures mitigating environmental impacts are taken. (See *e.g.*, 24 CFR Part 51). Often these mitigating measures take some time to fulfill. Based on the need for quick implementation of the Program, HUD may adjust rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation.

HUD also notes that the environmental review often will reveal information not contained in the application that may have relevance to the selection process. For example, the environmental review may reveal that the proposed site is located near a hazardous condition that could adversely affect the appropriateness of the site for housing for homeless persons. The final guidelines may permit HUD to make further adjustments to the ratings based on the information revealed during the environmental review.

5. Final Selection

In the final stage of the selection process, the highest ranked applications would be considered for final selection in accordance with their rank order, as determined under paragraph D.3. of this section and any adjustments made during environmental review. HUD expects to fund at least five to 10 projects. Among the projects funded, we anticipate a variety of projects differing in size, geographic distribution, and the homeless population to be served. Accordingly, if the top-rated applications under the ranking criteria described above involve projects that would predominantly serve one geographic area, would primarily serve one homeless population, or would be substantially of the same project size (in terms of the number of homeless persons served), HUD may substitute one or more highly rated applications to ensure reasonable variety in the demonstration.

E. Program Requirements

1. Required Agreements

Recipients must make the following agreements with HUD for any structure for which assistance under the Program is provided:

(i) *Operation of transitional housing.* Each recipient would be required to agree to operate transitional housing in accordance with the provisions of these guidelines. In addition, each recipient would have to agree to limit the stay of its residents to a period that is reasonable for the homeless population to be served, but in no event could this period (or the stay of an individual resident) exceed 18 months.

HUD does not believe it appropriate to establish more specific limits on the length of time that various homeless populations may reside in transitional housing. Accordingly, to set the time limit for its residents, the applicant would be required to propose in its application a limitation on the stay of residents and to demonstrate that the proposed time period would provide an appropriate opportunity to permit members of the homeless population to be served to move to independent living.

(ii) *Assessments.* HUD would require recipients to agree to assess the supportive services required for each resident upon his or her admission to the transitional housing. This assessment would be designed to identify all supportive services required by the resident to facilitate the transition to independent living. It would also include an individual action plan identifying the steps that the individual and the recipient plan to take over a specified period of time to enable the individual to reach the goal of independent living.

While HUD does not propose to require additional reassessments of residents during their stay in transitional housing, the Department encourages the use of additional assessments. These assessments and reassessments are included in the definition of operating costs (paragaph A. of this section, above), and their costs are, therefore, eligible for assistance under the Program.

(iii) *Residential supervisor.* Each recipient would have to agree to employ a full-time residential supervisor with sufficient expert knowledge to provide, or supervise the provision of, supportive services to the residents of the transitional housing. HUD would require that the recipient agree to employ a residential supervisor throughout the term of its commitment to HUD to operate transitional housing. (The term of the recipient's commitment to operate transitional housing is discussed at paragraphs E.1.(iv) and E.2. of this section, below.)

The level of expert knowledge required of the supervisor and the amount of supervisory guidance needed will vary with the homeless population that the recipient proposes to serve. Therefore, HUD would not impose minimum requirements regarding the level and quality of supervision. For example, HUD would not require that all residential supervisors live in the transitional housing. The proposed job requirements of the residential supervisor, however, would be considered by HUD in assessing the adequacy of the support services. (See paragraph D.2.(iv)(b) of this section, above.)

(iv) *Use of structure.* Each recipient must agree to use the structure for which assistance is provided as transitional housing for not less than five years following its initial occupancy. (The relationship between this five-year operating requirement and the 10-year non-repayment requirement is discussed in paragraph E.2. of this section, below.)

(v) *State and local requirements.* Recipients must agree to comply with all State and local requirements regarding the condition of the structure to be used in the demonstration (*e.g.*, the structure must meet (or after rehabilitation will meet), and will continue to meet, applicable State and local standards of being in a safe and sanitary condition).

Recipients must also agree to comply with all State and local requirements regarding the operation of transitional housing, such as the State and local licensing requirements.

(vi) *Reporting and recordkeeping.* Each recipient would be required to keep any records and make any reports that HUD may require.

2. Repayment of advances

Section 512(b) of the Act provides that the recipient need not repay any acquisition/rehabilitation advance (1) if it uses the structure for hwich the advance was made as transitional housing in accordance with the provisions of the Program for not less than the 10-year period following its initial occupancy, or (2) if, within the 10-year period, the Secretary determines that the structure is no longer needed for use as transitional housing and approves its use for another charitable purpose for the remainder of the 10-year period. If the recipient fails to comply with the conditions for waiver of repayment, it must repay to HUD in cash the full amount of the advance received, on such terms as HUD may prescribe. Under section 513(c)(4) and paragraph E.1.(iv) of this section, all recipients are required to agree to use each structure for which assistance is provided as transitional housing for not less than the five-year period following the initial occupancy of the housing.

HUD believes that these statutory provisions impose a five-year obligation on all recipients to operate a project under the demonstration Program. After five years, recipients that have received an advance may either: (1) Continue operating transitional housing under the Program for the next five years and be under no obligation to repay the advance; (2) obtain a waiver from the Secretary, use the structure for the approved alternate charitable purpose for the remainder of the 10-year period, and be under no obligation to repay the advance (note that HUD's approval of alternative charitable uses will be subject to the Establishment Clause limitations described in paragraph B.3.(iv) of this Section, above); or (3) stop using the structure as transitional housing or discontinue an approved alternate charitable use at any time during the second five-year period and repay the full amount of the advance in cash and on the terms prescribed by the Secretary.

The duty to provide transitional housing in accordance with the Program's requirements would be incorporated into the grant agreement executed by HUD and the recipient. HUD would enforce these contractual obligations, including the repayment obligation, through actions on the contract. Additionally, restrictions regarding the use of the structure would be contained in covenants that would be recorded with lands records in the jurisdiction where the structure is located.

Recipients operating structures that are destroyed by fire or taken by eminent domain would be relieved of their five- and 10-year obligations. To ensure repayment of the advance under such circumstances, all recipients would be required to obtain property casualty insurance with HUD named as beneficiary, in an amount at least equal to the amount of the advance. Additionally, a recipient whose structure is taken by eminent domain would be required to repay the advance to the extent that the funds are available from the eminent domain proceeding.

The Department would permit recipients to bring in a successor to continue transitional housing operations or to use the structure for an approved alternate charitable use. The successor would be subject to the approval of the Department. Repayment obligations would either remain with the original recipient or be transferred to the successor, depending upon the terms of HUD's approval.

3. Resident Rent

Each homeless person residing in transitional housing would be required to pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under this statutory scheme, each resident would pay as rent the highest of (1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses); (2) 10 percent of the family's monthly income; or (3) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated. As part of its technical assistance authority under the Program, HUD will provide successful applicants with detailed information and assistance concerning the calculation of resident rent.

4. Funding Amendments and Recaptures

When HUD selects an applicant, it will obligate funds to cover the amount of any acquisition/rehabilitation advance and annual payments for operating costs for five years. After the obligation, HUD would make no upward revision to the amount committed for the advance or the annual payments of operating costs.

HUD would retain the right to deobligate and recapture amounts for the acquisition/rehabilitation advance if the actual total cost of the acquisition/rehabilitation is less than the amount obligated. HUD may also reduce the amounts obligated for operating costs in any later year, based on the recipient's actual operating cost experience. Similarly, if a recipient's operations generate a substantial amount of resident rent (as discussed in the preceding paragraph), HUD would retain the right to adjust the operating cost allowed under the grant agreement downward, to the extent of the rent received.

HUD would reserve the right to recapture funds made available under the Program if proposed acquisition/rehabilitation activities are not begun and completed within a reasonable time after selection, or if transitional housing operating are not commended within a reasonable time following selection. Funds already expended for eligible activities under the Program would generally not be subject to recapture. The grant agreement would set forth, in detail the circumstances under which funds could otherwise be recaptured and other sanctions could be imposed.

6. Other Federal Requirements

(i) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the Program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons (see paragraph C. of this Section, above), a recipient serving a designated population of homeless persons would, within the designated population, be required to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, and national origin.

(a) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3619) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42

U.S.C. 6101–6107) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(c) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60; and

(d) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 170l1u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(e) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the recipient must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded.

(f) If the procedures that the recipient intends to use to make known the availability of the transitional housing would be unlikely to reach persons of any particular race, color, religion, sex, or national origin who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that they are made aware of the availability of transitional housing opportunities.

(ii) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this Program.

(iii) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations.

(iv) *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 are applicable to the demonstration Program.

(v) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and A–110, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, that receives assistance under the demonstration and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(vi) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(vii) *Audit.* The financial management systems used by governmental entities that are recipients under this program must provide for audits in accordance with 24 CFR Part 44. Private nonprofit entity recipients are subject to the audit requirements of OMB Circular A–110. HUD may perform further and additional audits as it finds necessary or appropriate.

(viii) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 would not be applicable to applications under this Program. In accordance with OMB criteria governing the coverage of the Executive Order, HUD will exempt the Program from the intergovernmental review requirements because it involves research and development, national in scope. (*I.e.*, The Program is a demonstration designed to develop innovative approaches to providing transitional housing; its purpose is to determine the costs and the advantage of such housing; and the Department does not anticipate continued long-term funding of the Program.)

F. Waiver

To ensure flexibility in the administration of the Program, the Secretary of HUD would be permitted to waive any guideline that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and supported by documentation of the pertinent facts and grounds.

IV. Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(1)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

Upon implementation of the Program, the information collection requirements contained in this notice will be submitted to the Office of Management and Budget for review and approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number.

(The Catalog of Federal Domestic Assistance Program Number is 14.178.)

Authority: Sec. 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in sec. 514 of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 13, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–3761 Filed 2–23–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–4213–15; AA–8099–1]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 14(f) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f) and 1621(j), will be issued to Calista Corporation for approximately 7,355 acres. The lands involved are in the vicinity of Platinum, Alaska.

Seward Meridian, Alaska

Tps. 14 and 15 S., R. 75 W. (Unsurveyed)

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Tundra Drums.* Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the

decision, an agency of the Federal government or regional corporation, shall have until March 27, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ann Johnson,

Chief, Branch of Calista Adjudication.

[FR Doc. 87–3914 Filed 2–24–87; 9:15 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Supplemental Call for Information and Nominations; Proposed Sale 96—North Atlantic

Purpose of Supplemental Call

As part of the Minerals Management Service's (MMS) analysis of, and planning for, Outer Continental Shelf (OCS) Sale 96—North Atlantic, all interested parties are invited to provide additional information on blocks (see "Description of Area") in the North Atlantic planning area which were not included in the Sale 96 Call for Information and Nominations (Call) as published in the November 4, 1986, **Federal Register**. Information received in response to the Call revealed an interest in blocks outside of the Call area. The MMS is therefore seeking information on certain blocks outside of the original Call area but beyond the 60-meter isobath and not excluded from leasing by the congressional moratorium. Additional information related to such blocks will assist in the determination of the area to be examined in an environmental impact statement (EIS) for Sale 96. Since these blocks were not included in the Call, respondents who have an interest in nominating or commenting on this area are now requested to do so. Nominations and comments submitted in response to the Call need not be resubmitted, but additional responses to the November Call will be accepted until the close of this comment period.

Use of Information from Supplemental Call

Information received in response to this Supplemental Call will be used to help determine areas for further study during the Sale 96 prelease process. The EIS study area will be based on hydrocarbon potential; industry interest; and environmental, national defense, or other potential joint or multiple use conflicts.

Description of Area

This Supplemental Call is targeted to those blocks or portions of blocks within Official Protraction Diagram (OPD) NK 19–9 which lie in water depths greater than 60 meters, are not excluded from leasing by the congressional moratorium, and were not included in the Sale 96 Call.

The area covered by this Supplemental Call is depicted on the bathymetric map for OPD NK 19–9 and on the Supplemental Call map. Both maps are available free upon request from the Regional Supervisor, Leasing and Environment, MMS, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, telephone (703) 285–2165. Copies of the Call published in the **Federal Register** on November 4, 1986, at page 40114, will be forwarded to requesters of maps.

Instructions on Supplemental Call

Nominators are asked to designate any of the blocks covered by this Supplemental Call that they wish to have included in Sale 96. Expressions of interest should be as specific as possible and should be shown by outlining the area(s) of interest along block lines. A detailed list of whole and partial blocks nominated by OPD designation should be submitted to ensure correct interpretation of nominations. Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities submitting indications of interest and/or comments will be a matter of public record.

Nominators should rank selected blocks according to the priority of their interest (High, Medium, or Low). The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Respondents with information (on the area covered by this Supplemental Call) that would assist in the preparation of the EIS are encouraged to submit comments.

Respondents' nominations and/or comments must be submitted no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Supplemental Call for Information and Nominations for proposed Sale 96—North Atlantic." Letters and maps should be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under "Description of Area."

Dated: February 13, 1987.

Wm. D. Bettenberg,

Director, Minerals Management Service.

Approved:

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 87–3811 Filed 2–24–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Gates of the Arctic National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Department of the Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. NPS subsistence research program.
2. Update on ATV/Anaktuvuk Pass situation.
3. Review of NPS proposal to the Game Board on brown bears; and additional discussions on Game Board proposals.
4. Review, revision and commission vote on final subsistence hunting program.
5. Discussion of the problem of new residents at Nolan: Should they be allowed to be subsistence users in the park?

Information: The Gates of the Arctic National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487.

Date: The meeting will he held at 9:00 a.m. on March 12 and continue through March 13.

Address: FAA Rec. Hall, Bettles, Alaska.

Information: Roger Siglin, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, (907) 456–0281.

Boyd Evison,

Regional Director.

[FR Doc. 87–3783 Filed 2–24–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in

the National Register were received by the National Park Service before February 14, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written coments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 12, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Hot Spring County

Malvern, *Bank of Malvern* 212 S. Main St.

Mississippi County

Blytheville, *Blytheville Greyhound Bus Station*, 109 N. 5th St.

Union County

Lisbon, *Mt. Moriah Masonic Lodge No. 18*, Off AR 172

CONNECTICUT

New London County

Preston, *Preston City Historic District*, Amos and Old Shetucket Rds., NW Corner Rd., and CT 164

KENTUCKY

McCraken County

Paducah, *St. Mary Academy Complex*, Bounded by Fourth, Fifth, Monroe, and Jefferson Sts.

MAINE

Franklin County

North Jay, *Jay-Niles Memorial Library*, US 4

Hancock County

Sullivan vicinity, *Gavin Watson Site*, Smelt Cove, E. Sullivan

Oxford County

Otisfield vicinity, *Sargent, Levi, House*, Otisfield Gore Rd.

Waterford vinicity, *McWain—Hall House*, McWain Hill Rd.

Penobscot County

Bangor, *Bangor Mental Health Institute*, 656 State St.

Waldo County

Islesboro, *Grindle Point Light Station*, Ferry Rd.

Washington County

Cherryfield, *Archibald—Adams House*, ME 193

York County

East Limington vicinity, *Chase, Capt. Josiah E., Octagon House*, Chase's Mill Rd.

MICHIGAN

Manistee County

Kaleva, *Makinen, John J., Bottle House*, 14551 Wuoksi Ave.

MISSISSIPPI

Lauderdale County

Meridian, *East End Historic District (Meridian MRA)*, Roughly bounded by Eighteenth St., Eleventh Ave., Fourteenth St., Fourteenth Ave., Fifth St., and Seventeenth Ave.

Meridian, *Highlands Historic District (Meridian MRA)*, Roughly bounded by Fifteenth St., Thirty-fourth Ave., Fifth St., Nineteenth St., and Thirty-sixth Ave.

Meridian, *Mid-Town Historic District (Meridian MRA)*, Roughly bounded by Twenty-third Ave., Fifteenth St., Twenty-eighth Ave., and Twenty-second St.

Meridian, *Poplar Springs Road Historic District (Meridian MRA)*, Roughly bounded by Twenty-ninth St., Twenty-third Ave., Twenty-second St., and Twenty-ninth Ave.

Meridian, *West End Historic District (Meridian MRA)*, Roughly bounded by Seventh St., Twenty-eighth Ave., Shearer's Branch, and Fifth St.

MISSOURI

Lafayette County

Higginsville, *Chicago and Alton Railroad Depot at Higginsville*, 2109 Main St.

St. Louis (Independent City)

Wasington Avenue: East of Tucker District, Roughly bounded by Lucas, N. Ninth, St. Charles, Locust, and Tucker Blvd.

St. Louis County

Jennings, *Seed, Miles A., Carriage House*, 2456 Hord Ave.

NEW MEXICO

Santa Fe County

Santa Fe, *Scottish Rite Cathedral*, 463 Paseo de Peralta

NOTH CAROLINA

Alamance County

Bellemont vicinity, *Kernodle—Pickett House*, Jct. of SR 1136 and SR 1131

Burlington vicinity, *Sunny Side*, SR 1136 3 mi. E of jct. with NC 62

Snow Camp vicinity, *Friends Spring Meeting House*, Jct. of SR 1005 and SR 2338

OHIO

Belmont County

Belmont, *Belmont Historic District*, Roughly bounded by Barrister, John, Jefferson, Sycamore, and Bridge Sts.

Cuyahoga County

Cleveland, *Archwood Avenue Historic District (Brooklyn Centre MRA)*, Archwood Ave. roughly bounded by W. Thirty-first Pl. and W. Thirty-seventh St.

Cleveland, *Bomante House (Brooklyn Centre MRA)*, 3000 Mapledale Ave.

Cleveland, *Brooklyn Bank Building (Brooklyn Centre MRA)*, 3764—3770 W. Twenty-fifth St.

Cleveland, *Brooklyn Memorial Methodist Church (Brooklyn Centre MRA)*, 2607 Archwood

Cleveland, *Cleveland Fire Department Engine Company No. 24 (Brooklyn Centre MRA)*, 3725 W. Twenty-fifth St.

Cleveland, *Eighth Reformed Church (Brooklyn Centre MRA)*, 2409 Willowdale

Cleveland, *Jones Home for Children (Brooklyn Centre MRA)*, 3518 W. Twenty-fifth St.

Cleveland, *Kindra, W. H., Apartments (Brooklyn Centre MRA)*, 3802—2812 Mapledale Ave.

Cleveland, *Malio House (Brooklyn Centre MRA)*, 3781 W. Twenty-fifth St.

Cleveland, *Riverside Cemetery Building (Brooklyn Centre MRA)*, 3607 W. Twenty-fifth St.

Cleveland, *Riverside Cemetery Chapel (Brooklyn Centre MRA)*, 3607 Pearl Rd.

Cleveland, *Third Church of Christ Scientist (Brooklyn Centre MRA)*, 3648 W. Twenty-fifth St.

Cleveland, *Townes, Clayton, House (Brooklyn Centre MRA)*, 3800 W. Thirty-third St.

Franklin County

Columbus, *Ohio Farm Bureau Federation Offices*, 620 and 630 E. Broad St.

Greene County

Xenia, *Conner, Alexander, House*, 99 E. Second St.

Jefferson County

Mingo Junction, *Central High School (Mingo Junction MRA)*, 110 Steuben Ave.

Mingo Junction, *Central Public School (Mingo Junction MRA)*, 109 St. Clair Ave.

Mingo Junction, *Commercial Street Historic District (Mingo Junction MRA)*, Roughly Commercial St. between McLister and Highland Aves., May, and RR Tracks.

Mingo Junction, *North Hill Historic District (Mingo Junction MRA)*, Bounded by Logan, George, Western, and Alley W of Logan Ave.

Mingo Junction, *St. Agnes Roman Catholic Church (Mingo Junction MRA)*, 220 St. Clair Ave.

Lucas County

Toledo, *St. Peter and St. Paul Historic District—Oliver's Second Addition*, 600 and 700 blks. of S. St. Clair St.

OKLAHOMA

Garfield County

Enid, *Eason, T.T., Mansion*, 1305 W. Broadway

Enid, *McCristy—Knox Mansion*, 1323 W. Broadway

PENNSYLVANIA

Philadelphia County

Philadelphia, *USS DES MOINES (CA—134) (cruiser)*, Philadelphia Navy Yard

TENNESSEE

Knox County

Knoxville vicinity, *Riverdale Mill*, Wayland Rd. and Thorngrove Pike

Shelby County

Memphis, *South Bluffs Warehouse Historic District*, Roughly S. Front St., Wagner Pl., and Tennessee St. from Beale St. to Calhoun Ave.

WASHINGTON

Clark County

Yacolt vicinity, *Pomeroy Farm*, 10902 NE Lucia Falls Rd.

WISCONSIN

Dane County

Madison, *Bellevue Apartment Building*, 29 E. Wilson St.

Stoughton, *Ingebretson, Guate, Loft House*, 1212 Pleasant Hill Rd.

La Crosse County

Onalaska, *La Crosse County School of Agriculture and Domestic Economy*, 700 Wilson Ave.

Rock County

Janesville, *Wisconsin School for the Blind-Music Building*, 1700 W. State St.

Walworth County

Lake Geneva, *Davidson Hall*, 550 S. Shore Dr.

Winnebao County

Neenah, *Paepke, Henry, House*, 251 E. Doty Ave.

[FR Doc. 87–3854 Filed 2–24–87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 63 [1]]

Bulk Carrier Conference, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Bulk Carrier Conference, Inc. (BCC) has filed, pursuant to Section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Because some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of BCC's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from BCC's representatives:

Reginald E. Mutter, Bulk Carrier Conference, Inc., 249 South Van Dorn St., Alexandria, VA 22304

Leonard A. Jaskiewicz, Grove, Jaskiewicz, Gilliam, and Cobert, 1730 M Street NW., Washington, DC 20036.

Additional information is in the Commission decision. Copies may be purchased from T.S InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC, 20423, or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area.

DATES: Comments from interested persons are due March 26, 1987. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 63 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Ken Schwartz, (202) 275–7956

or

Louis E. Gitomer, (202) 275–7691.

SUPPLEMENTARY INFORMATION: We have provisionally approved BCC's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus-Implementation of Pub. L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: Identification and description of member carriers; right of independent action; open meetings; final disposition of cases; general standards; single-line rates; general increases and decreases; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. BCC has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to BCC's agreement.

A copy of any comments filed with the Commission must also be served on BCC, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that BCC must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: February 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3837 Filed 2–23–87; 8:45 am]

BILLING CODE 7035-01-M

[1] Section 5 was recodified as Section 10706.

DEPARTMENT OF JUSTICE

Lodging of Consent Judgment Pursuant to the Clean Water Act; City of Boonville, IN

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 10, 1987 a proposed Consent Judgment in United States v. City of Boonville, Civil Action No. EV–84–187C was lodged with the United States District Court for the Southern District of Indiana. The proposed Consent Judgment concerns discharge of pollutants from the City of Boonville's wastewater treatment plant. The proposed Consent Judgment requires the defendant to institute interim measures and to meet interim effluent limitations pending the construction of required improvements to the wastewater treatment plant, to meet final effluent limitations, and to pay a $26,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Boonville*, D.J. Ref. 90–5–1–1–2071.

The proposed Consent Judgment may be examined at the office of the United States Attorney, Southern District of Indiana, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana, and at the Region V Office of Environmental Protection Agency, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW.,

Washington, DC 20530. A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–3810 Filed 2–24–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Public Briefing

A public briefing of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, March 5, 1987, in Room N–5437–B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The purpose of the briefing, which will begin at 9:30 a.m., is to allow Administration officials to present details of the Legislative proposal on the funding and termination of Defined Benefit Pension Plans.

Signed at Washington, DC, this 19th day of February, 1987.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 87–3815 Filed 2–24–87; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Membership Appointments

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Robert E. Gresham, Donald F. Bozarth, Richard L. Petrocci and Peter J. Basso.

DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Malcolm L. Trevor, Special Assistant to the Executive Director, National Capital Planning Commission, 1325 G Street, NW., Suite 1002, Washington, DC 20576 (202) 724–0206.

Reginald W. Griffith,

Executive Director.

[FR Doc. 87–3806 Filed 2–24–87; 8:45 am]

BILLING CODE 7520–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: March 23–24, 1987. Time: 8:30 a.m. to 5:00 p.m. Room: M–14.

Program

This meeting will review applications for Humanities Instruction in Elementary and Secondary Schools, submitted to the Division of Education Programs, for projects beginning after August 31, 1987.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87–3894 Filed 2–24–87; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Humanities; Humanities Panel Advisory Committee; Meeting; Change in Date

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Change.

This is to announce a change in the date of a National Endowment for the Humanities, Humanities Panel Advisory Committee meeting which was announced on page 4207 of the **Federal Register** dated February 10, 1987.

The meeting originally scheduled to be held on March 27, 1987 in Room 315 of the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC to review Research Tools applications submitted for projects beginning after July 1, 1987 has been changed. The meeting will now be held on March 23, 1987.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87–3893 Filed 2–24–87; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 9, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the second calendar quarter of 1986. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedical actions that were undertaken are also described. During the report period, there were two abnormal occurrence at the nuclear plants licensed to operate. One involved an out of sequence control rod withdrawal and the other involved a boiling water reactor emergency core cooling system design deficiency. There were five abnormal occurrences at the other NRC licensees. Two involved willful failure to report diagnostic medical misadministrations to the NRC; one involved a therapeutic medical misadministration; and two involved diagnostic medical misadministrations. There were two abnormal occurrences reported by the Agreement States. One involved an uncontrolled release of krypton-85 to an unrestricted area; the other involved a contaminated radiopharmaceutical used in diagnostic administrations.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington, DC. or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG–0090, Vol. 9, No. 2 (or any of the previous reports in this series), may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20012–7982. A years subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Mastercard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC this 12th day of February 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87–3901 Filed 2–24–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Regional and I&E Programs; Meeting

The ACRS Subcommittee on Regional and I&E Programs will hold a meeting on March 12, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, March 12, 1987—8:30 a.m. until 1:00 p.m.

The Subcommittee will continue its review of the activities of the Office of Inspection and Enforcement.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to atend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 18, 1987.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 87–3900 Filed 2–24–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Draft Supplement 2 to the Programmatic Environmental Impact Statement Related to TMI-2 Cleanup; General Public Utilities; Extension of Comment Period

On December 31, 1986, a Notice of Availability of Draft Supplement 2 to the Programmatic Environmental Impact Statement on the TMI-2 Cleanup was published in the **Federal Register** (51 FR 47323). The Notice stated that comments on the draft Supplement must be received before February 28, 1987. Since several intersted persons, as well as the Commission's Advisory Panel for the Decontamination of Three Mile Island Unit 2, have requested an extension, the NRC is hereby extending the comment period for this draft supplement until April 14, 1987.

Comments should be forwarded to Dr. Michael T. Masnik, TMI Cleanup Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 18th day of February 1987.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Three Mile Island-2 Cleanup Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 87–3859 Filed 2–24–87; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A87–11; Order No. 745]

Order Accepting Appeal and Establishing Procedural Schedule; Fabius, AL (Leota Giles, Petitioner)

Issued February 17, 1987

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket No. A87–11.

Name of Affected Post Office: Fabius, Alabama 35965.

Name(s) of Petitioner(s): Leota Giles.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 9, 1987.

Categories of Issues Apparently Raised: 1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders

(A) The record in this appeal shall be filed on or before February 24, 1987.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Fabius, Alabama 35965

February 9, 1987—Filing of Petiton

February 17, 1987—Notice and Order of Filing of Appeal

March 6, 1987—Last day of filing of petition to intervene [*see* 39 CFR 3001.111(b)].

March 16, 1987—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b).

April 6, 1987—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

April 21, 1987—Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

April 28, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 9, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 87–3816 Filed 2–24–87; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24106; File No. SR–BSE–86–6]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Amendments to the Use of the General Securities Representative (Series 7) Examination and Its Study Outline to Qualify Persons Seeking Registration as General Securities Representatives

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1986 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-Regulatory Organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange, Incorporated hereby announces as a proposed rule change the use of the Series 7 examination and its study outline to qualify those persons seeking registration as general securities representatives.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, or the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change reflects the BSE's current use and commitment to future use of the Series 7 examination and its study outline in qualifying persons seeking registration as general securities representatives. The use of the Series 7 examination and its study outline for the above stated purpose is consistent with section 6(c)(3) of the Securities Exchange Act of 1934 which authorizes a national securities exchange to "examine and verify the qualifications of an applicant" to become a member or associated with a member in accordance with procedures established by the rules of an exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

(C) Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Boston Stock Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commision and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the file number in the caption above and should be submitted by March 17, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, in that, it establishes appropriate qualifications for persons seeking general securities representative registration.

The Commission finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof, in that, the Commission has, to date, approved proposed rule changes submitted by the National Association of Securities Dealers, Inc., the Philadelphia Stock Exchange, Inc. and the New York Stock Exchange, Inc. that permitted these exchanges to revise and update the Series 7 examination and its study outline to reflect recent trends and developments in the securities markets.[1] Accordingly, the Commission believes that the BSE should be permitted to use the revised Series 7 examination and its study outline as a part of its training and qualification program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby, is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: February 17, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3884 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24105; File No. SR–PSE–86–34]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Amendments to Its Equity Floor Procedure Advices Concerning Conduct on Its Equity Trading Floors and the Wearing of Badges on Its Equity Trading Floors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1987, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been proposed by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions and amendments to the Equity Floor Procedure Advices ("EFPA") 1–B and 1–C.[1] The changes in EFPA 1–B relate to prohibiting eating and drinking on the Los Angeles Equity Trading Flood, and increasing the fine schedule that is currently utilized in this Advice. Proposed amendments to EFPA 1–C would require that badges be worn on the Los Angeles Equity Trading Floor. Currently the badge requirement under EFPA 1–C applies only to the San Francisco Equity Trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The provisions of PSE Equity Floor Procedure Advice ("EFPA") 1–B, relate to Conduct on the Equity Trading Floor. It sets forth the basic contention that the conduct of individuals on the Equity Trading Floors of the PSE affects not only the image of the quality, fairness and professionalism of the Exchange marketplace, but also impacts the safety and conduct of both the individuals on the floor and the efficient undisrupted conduct of business on the floor.

The proposed changes to EFPA 1–B involve several items. First, the decision was made to adopt a specific section prohibiting eating or drinking on the Los Angeles Trading Floor. This was based on the need to prevent spillage from such materials slipping through the protective floor covering and causing the fire alarm system from going off and shutting down the trading floor. Because such an unnecessary shut down would cause disruption to the trading facilities and have an impact on the rest of the interrelated marketplace, a statement outlining the potential common-law liability was also inserted into EFPA 1–B.

Secondly, to further define the prohibition of such behavior, and to continue the general structure of EFPA 1–B as it is currently written, a fine schedule was approved detailing amounts for the first, second, third and subsequent offenses. These amounts ($100, $250, $500) have also been approved as changes in the current fine schedules so as to keep the amounts consistent and to update the fine schedule since the current amounts were seen as out of date and perhaps had lost a significant amount of their deterent effect.

The additional portion of the subject of this rule filing relates to EFPA 1–C, which currently mandates the strict use of Badges on the San Francisco Equities Floor. Based on a need to maintain proper security and to prohibit the admission of unauthorized personnel to the Los Angeles Trading Floor as well as the San Francisco Floor, it has been proposed to amend EFPA 1–C to include the Los Angeles Equity Trading Floor as well. Therefore, the language currently contained in EFPA 1–C which relates to only the San Francisco Floor has been deleted to include appropriate language which relates to both equities floors.

These proposed revisions do not affect the currently existing Exchange rules and procedures which delineate the method of citation or the rights of members and Floor clerical employees of members and member organizations to appeal any penalties that might be imposed.

These revisions to PSE Equity Floor Procedure Advices are intended to promote the efficient, undisputed conduct of business on the equity trading floors. This in turn, will facilitate transactions in securities, perfect the mechanism of a free and open market, and protect investors and the public interest, as called for by section 6(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes to Equity Floor Procedure Advice's 1–B and 1–C are concerned solely with regulating behavior on the PSE equity trading floors, and as such they will not impose any burden on competition.

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[1] *See* Securities Exchange Act Release Nos. 23325 (June 16, 1986), 51 FR 22874, 23685 (October 6, 1986) 51 FR 36621, and 23954 (January 5, 1987) 52 FR 1270.

[2] 17 CFR 200.30–3.

[1] In its filing, the PSE included copies of both the proposed amendments to its Equity Floor Procedure Advices and the revised fine schedule. Copies of the amendment and fine schedule are available from the Commission at the address noted in Section IV below and from the PSE.

(C) Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 551, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by March 18, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 17, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3885 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24103; File No. SR–Phlx–86–14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On May 1, 1986, the Philadelphia Stock Exchange, Inc., submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change to revise certain of its strike price policies to permit the orderly introduction of $.025 strike price intervals for British pound put and call options contracts.

The proposed rule change was noticed in Securities Exchange Act Release No. 23964 (January 7, 1987), 52 FR 1571 (January 14, 1987). No comments were received on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6, and the rules and regulations thereunder. This rule change will provide investors in a non-volatile currency with more choices as to their participation in this market. The flexibility of switching from a $.05 to $.025 intervals will enable the Exchange to be competitive with the Chicago Mercantile Exchange, which currently has $0.25 intervals on British Pound options contracts.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that: (1) The proposed rule change has been published for comment for 21 days, and no comments have yet been received; and (2) the strike price revision is similar to others the Commission has approved in non-volatile currencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 13, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3886 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management And Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

New, File No. 270–311, Rule 15Ca1–1
New, File No. 270–310, Rule 15Ca2–1
New, File No. 270–309, Rule 15Ca2–2
New, File No. 270–308, Rule 15Cc1–1
Rev, File No. 270–19, Form BD

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the following proposed rules, together with proposed revisions to Form BD under the Securities Exchange Act of 1934 as amended by the Government Securities Act of 1986:

Rule 15Ca1–1—Provides that a registered broker-dealer that is a government securities broker or dealer must notify the Commission of their government securities activities on Form BD.

Rule 15Ca2–1—Provides that an application for registration as a government securities broker or dealer must be filed on Form BD.

Rule 15Ca2–2—Requires a Statement of Financial Condition and other statements to be filed by government securities broker-dealers with their application for registration.

Rule 15Cc1–1—Requires a government securities broker or government securities dealer to file a Form BDW when it withdraws its registration.

Form BD—Application for Registration as a Broker or Dealer Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

February 18, 1987.

[FR Doc. 87–3891 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15580 (812–6186)]

Citibank, N.A.; Foreign Custodian Arrangements

February 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Citibank, N.A.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from section 17(f).

Summary of Application: Applicant seeks an order to permit maintenance of securities and other assets of any registered management investment company, other than an investment company registered under section 7(d) of the 1940 Act, for which Applicant serves as custodian or subcustodian ("U.S. Investment Companies") with (i) fifteen wholly-owned foreign subsidiaries of Applicant's bank company holding parent, Citicorp (each of which is delineated in the application and hereafter referred to as a "Foreign Subsidiary"), (ii) ANZ Nominees Limited, a New Zealand banking institution, and (iii) Frankfurter Kassenverein AG, one of the central systems for the handling of securities or equivalent book-entries in West Germany.

Filing Date: The application was filed on August 19, 1985, and amended on January 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Citibank, N.A., c/o Jonathan R. Bell, Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Foreign Subsidiary is a wholly-owned, direct or indirect, subsidiary of Citicorp and is a banking institution or trust company incorporated under the laws of a country other than the U.S. and regulated as such by that country's government or an agency thereof. Each Foreign Subsidiary does not satisfy the applicable shareholder's equity requirement contained in Rule 17f–5 under the 1940 Act, and thus, does not qualify as an "eligible foreign custodian" under that Rule.

2. Seven of the fifteen Foreign Subsidiaries have experience in providing custody services to U.S. Investment Companies. Before Applicant will consider maintaining U.S. Investment Company assets with the remaining Foreign Subsidiaries, Applicant will have determined, based on the level of service, adequacy of safeguards, competence of management, timeliness and responsiveness of service, and reasonableness of fees, that such Foreign Subsidiary is capable and well qualified to provide custody services for U.S. Investment Companies and that under the proposed foreign custody arrangements, investor protection would not be diminished. In addition to ensuring adequate investor protection, depositing U.S. Investment Company assets with the Foreign Subsidiaries would give Applicant a measure of flexibility in the use of its global custody network.

3. ANZ Nominees Limited ("ANZ") is a banking institution incorporated and regulated under the laws of New Zealand. Although ANZ does not satisfy the applicable shareholders' equity requirement contained in Rule 17f–5, to qualify as an "eligible foreign custodian", its parent is Australia and New Zealand Banking Group Limited (ANZ Bank"), an Australian banking institution with shareholders' equity exceeding $800 million.

4. Frankfurter Kassenverein AG ("Frankfurter") services the Frankfurter stock exchange and is one of several central systems for the handling of securities or equivalent book-entries in West Germany. Accordingly, it does not meet the requirement that a securities depository or clearing agency must operate *the* central system in its respective country in order to qualify as an "eligible foreign custodian" under Rule 17f–5.

Applicant's Conditions:

If the requested order is granted, Applicant expressly consents to the following conditions:

1. The foreign custody arrangements with the Foreign Subsidiaries and ANZ will satisfy all requirements of Rule 17f–5, except the provision regarding the foreign custodians' shareholders' equity level.

2. The foreign custody arrangements with Frankfurter will satisfy all requirements of Rule 17f–5, except the requirement that securities depositories must be the central system for the handling of securities or equivalent book-entries in the relevant country.

3. Securities of U.S. Investment Companies will be maintained with a Foreign Subsidiary only in accordance with an agreement, required to remain in effect at all times during which the Foreign Subsidiary does not satisfy the shareholders' equity requirement of Rule 17f–5, among the U.S. Investment Companies or custodians for which Applicant serves as custodian or subcustodian, Applicant, the Foreign Subsidiary and Citicorp, pursuant to the terms of which,

(i) Applicant would act as the custodian or subcustodian of the securities of the U.S. Investment Company,

(ii) Applicant would delegate to the Foreign Subsidiary such of Applicant's duties and obligations as would be necessary to permit the Foreign Subsidiary to hold in custody in the country in which it operates, the securities of the U.S. Investment Company or custodian, and

(iii) Citicorp would agree to be liable in accordance with the terms of a guarantee ("Guarantee") for losses relating to the bankruptcy or insolvency of the Foreign Subsidiary. The agreement would further provide that Applicant's delegation of duties to the Foreign Subsidiary would not relieve Applicant of any responsibility to the U.S. Investment Company or custodian for any loss due to such delegation except such loss as may result from (i) political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities), and (ii) other risk of loss for which neither Applicant nor the Foreign Subsidiary would be liable under Rule 17f–5 (i.e., despite the exercise of reasonable care).

4. The dollar value of the Guarantee for each Foreign Subsidiary will be adjusted based on the quarterly fluctuation of the market value of U.S. Investment Company assets in the custody of such Foreign Subsidiary, a follows: The market value of U.S. Investment Company assets in the custody of each Foreign Subsidiary will be calculated by Applicant or such

Foreign Subsidiary at the end of each calendar quarter. If it is determined that the market value of U.S. Investment Company assets in custody of a Foreign Subsidiary exceeds the Guarantee, Applicant will, as soon as practicable but in no event later than 30 days after receipt of the quarterly valuation, cause the Guarantee to be increased so as to fully cover the value of U.S. Investment Company assets in custody of the Foreign Subsidiary, calculated as of the most recent quarterly report.

5. Securities of U.S. Investment Companies will be maintained with ANZ only in accordance with an agreement among Applicant, ANZ and ANZ Bank, under which ANZ Bank would agree to be liable, at all times during which ANZ does not meet the shareholders' equity requirement of Rule 17f–5, for any loss, damage, cost, expense, liability or claim arising out of, or in connection with, the performance by ANZ of its custodial responsibilities to the same extent as if ANZ Bank had itself been the party required to provide custody services under the agreement, and for losses relating to the bankruptcy or insolvency of ANZ.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3887 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16361]

Application and Opportunity for Hearing; Citicorp

February 17, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures and two Pooling and Servicing Agreements each dated as of November 1, 1986 ("the Agreements") under which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under any of such indentures or the Agreements. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under such other indenture.

The Applicant alleges that: (1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989; the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes; the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A; and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2–42915, 2–58355, 2–59396 and 2–64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On November 25, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of November 1, 1986 (the "1986-Q Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on November 25, 1986 Mortgage Pass-Through Certificates, Series 1986-Q 9.00% Pass-Through Rate (the "Series 1986-Q Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986-Q Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $112,751,881.26 at the close of business on November 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986-Q Certificates. On November 25, 1986, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986-Q Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986-Q Certificates, to be liable for 7.5% of the initial aggregate principal balance of the 1986-Q-Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986-Q Guaranty. The 1986-Q Guaranty states the Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986-Q Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986-Q Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986-Q Certificates were offered by Prospectus Supplements dated November 7, 1986, supplemental to Prospectuses dated November 7, 1986. The 1986-Q Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) On November 25, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of November 1, 1986 (the "1986-R Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on November 25, 1986, Mortgage Pass-Through Certificates, Series 1986–R 9.50% Pass-Through Rate (the "Series 1986–R Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986–R Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $142,985,493.16 at the close of business on November 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986–R Certificates. On November 25, 1986, Applicant, the parent of Citibank, N.A.,

entered into a guaranty of even date (the "1986–R Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986–R Certificates, to be liable for 7.50% of the initial aggregate principal balance of the 1986–R Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986–R Guaranty. The 1986–R Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986–R Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–R Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–635B) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rules 415 under the Act. The Series 1986–R Certificates were offered by a Prospectus Supplemental dated November 11, 1986 supplemental to a Prospectus dated November 7, 1986. The 1986–R Agreement has not been qualified under the Trust Indenture Act of 1939.

The 1986–Q Agreement and the 1986–R Agreements are hereinafter called the 1986 Agreements and the 1986–Q Guaranty and the 1986–R Guaranty are hereinafter called the 1986 Guarantees.

(5) The obligations of Applicant under the Indentures and the 1986 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1986 Guarantees are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and 1986 Agreements.

(6) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–16361, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is further given that an interested person may, not later than March 13, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3892 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–10–M

[Rel. No. IC–15579; (812–6585)]

PaineWebber Investment Series and Master Series; Approval of Contingent Deferred Sales Load and Exchange Offer

February 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of ("1940 Act").

Applicants: PaineWebber Investment Series ("Investment Series"); PaineWebber Master Series, Inc. ("Master Series").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1; approval requested under section 11(a).

Summary of Application: Investment Series seeks an order to permit the imposition and waiver of a contingent deferred sales load on certain redemptions of its shares, and each Applicant requests an order to permit the imposition of a service charge on certain exchanges of their shares effected pursuant to a continuing offer of exchange. Pursuant to an existing order of the Commission (Investment Company Act Release No. 15166, June 23, 1986) Master Series is currently permitted to assess and waive a contingent deferred sales load under terms identical to those proposed by Investment Series.

Filing Dates: The application was filed on December 31, 1986, and amended on January 29, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Investment Series was organized as a Massachusetts business trust and is registered under the 1940 Act as a non-diversified, open-end, management investment company. On December 22, 1986, Investment Series filed a registration statement for the registration of shares of the PaineWebber Master Global Income Fund series under the Securities Act of 1933, and proposes to commence a public offering of those shares upon the effectiveness of such registration statement. Master Series was organized as a Maryland corporation and is registered under the 1940 Act as a diversified, open-end, management investment company, which currently offers four series of shares. Applicants anticipate creating and issuing additional series of classes of shares and, thus, request that the exemptive order extend to such future series or classes shares.

2. Applicant's principal underwriter, investment adviser and administrator is PaineWebber Incorporated ("Distributor"); the sub-adviser of each Applicant is Mitchell Hutchins Assets Management, Inc. ("Adviser"). The Distributor and the Adviser are both subsidiaries of PaineWebber Group, Inc.

3. Shares of Investment Series will be offered and sold without a sales charge, but a contingent deferred sales load ("CDSL") will be imposed on certain redemptions. The proceeds of the CDSL will be paid to the Distributor and will be used by the Distributor in whole or in part to defray costs incurred in connection with the sales of Investment Series' shares.

4. The CDSL will only be assessed on redemptions that reduce the current net asset value of a shareholder's account in a particular series of the Investment Series to an amount lower than the total dollar amount of payments made by the shareholder for the purchase of shares of that series during the six years preceding the redemption. No CDSL would be assess imposed if the net asset value of the shares redeemed by a shareholder on Investment Series did not exceed (1) increases in the net asset value of the shares above the total dollar amount of purchase payments for shares of that series during the six years preceeding the redemption (either through appreciation in the net asset value of the series or through reinvestment of dividends and capital gains distributions in additional shares of the series) or (2) purchase payments for shares of the series made more than six years prior to the date of redemption.

5. The amount of the CDSL will be calculated based on the number of years since the intitial purchase from which an amount is being redeemed. The CDSL will be 5% for redemptions made within one year of the relevant purchase payment and will decline 1% for each year thereafter until the seventh and following years when no CDSL will be assessed on redemptions. The amount of the CDSL will be calculated by first determining the date(s) on which the shareholder made the purchase payment(s) which is (are) the source of the redemption and then applying the appropriate percentage(s) to any portion of the redemption that is subject to the CDSL. In determining whether a CDSL is payable and, if so, the applicable percentage it will be assumed that the amount invested first is the first to be redeemed. This will result in the imposition of the CDSL at lowest possible rate.

6. Investment Series proposes to waive the CDSL upon the following redemptions of shares of any of its series: (i) Redemptions following the death or disability (as defined in the Internal Revenue Codes of a shareholder; (ii) any partial or complete redemption in connection with a distribution following retirement under a tax-deferred retirement plan or attaining age 70½ in the case of an Individual Retirement Account ("IRA"), Keogh Plan or a custodial account pursuant to Section 403(b) of the Internal Revenue Code, or any redemption resulting from the tax-free return of an excess contribution to an IRA; (iii) all shares purchased by officers, directors or trustees, and employees of Investment Series, the Distributor and its affiliated companies, and by members of the immediate families of such persons; (iv) redemptions made in connection with Investment Series' systematic withdrawal plan; and (v) as to a portion of the applicable CDSL redemptions from accounts with balances in excess of specifed amounts. Investments Series will comply with all the requirements of Rule 22d–1 under the 1940 Act.

7. With respect to the approval sought for the proposed exchange offers, when shares of two or more series of Investment Series are outstanding, shares of each such series may be exchanged for shares of another series at their relative net asset value without the imposition of a CDSL. Similarly, shares of each Applicant may be exchanged for shares of the other Applicant at their relative net asset values without the imposition of a CDSL. However, a $5.00 service charge will be deducted on each such exchange and paid to the Distributor for the costs incurred in effecting such exchanges. For purposes of calculating the CDSL upon redemption of shares acquired by way of exchange, the purchase of shares acquired in one or more exchanges will be deemed to have occurred at the time of the original purchase of the exchanged shares. Applicant will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted with respect to the contemplated offers of exchange.

8. Investment Series proposes to finance its distribution expenses under a plan of distribution adopted pursuant to Rule 12b–1 under the 1940 Act ("Plan"). Under the Plan each series of Investment Series will pay a monthly distribution fee to the Distributor for expenses incurred in connection with the offering of shares of each series of Investment Series. The distribution fee will be 1% on an annualized basis of the lesser of (a) the net asset value on the date of purchase ("Original Purchase Price") of shares (not including shares representing reinvestment of dividends and capital gains distributions) less the net asset value at the time of redemption of all shares redeemed upon which (i) a CDSL was paid or would have been imposed but for the fact that such shares were purchased six years or more prior to redemption and (ii) upon which no CDSL was imposed under a waiver from such charge as described herein; and (b) the average daily net assets of the series during the month. The Trustees of Investment Series will consider receipts from the CDSL obtained by the distributor in connection with their annual review of the Plan.

9. The requested exemptions and the approval of the exchange offers are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The proposed CDSL will permit shareholders of Investment Series to have the advantage of having purchase payments immediately and fully invested. Further, the decision to waive the CDSL in connection with certain redemptions of Investment Series' shares is appropriate and fair because such shares either are sold (a) with no significant marketing or selling expenses to the Distributor; (b) under circumstances where the imposition of a CDSL (e.g., for an involuntary redemption) is equivalent to imposing a penalty; (c) to shareholders which are members of a class favored under federal tax or securities laws/or (d) to substantial or long-term shareholders whose investments facilitate economies of scale and reduced expense ratios.

10. The imposition of the $5.00 service fee for effecting the proposed exchanges of Applicants' shares is fair and will not harm shareholders or discriminate among Applicants' shareholders. The exchange offers will provide shareholders the opportunity to change their investment objective from time to time. Further, the $5.00 service fee is designed merely to compensate the Distributor for its costs in facilitating exchanges between the series of Investment Series and between Applicants.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3888 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before March 26, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–6623.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: SBDC Project Officer's Checklist
Form No.: SBA 59
Frequency: Quarterly
Description of Respondents: SBDC's are required to submit on quarterly basis, a programmatic and financial report
Annual Responses: 196
Annual Burden Hours: 392
Type of Request: Extension

Title: Applications for Funds and Guaranty
Form Nos.: SBA 1022, 1022A
Frequency: On occasion
Description of Respondents: Small Business Investment companies are required to update financial information
Annual Responses: 220
Annual Burden Hours: 880
Type of Request: Extension

Title: Portfolio Financial Report
Form No.: SBA 1031
Frequency: Monthly and Annually
Description of Respondents: Small Business Investment companies are required to update financial and economic data
Annual Responses: 4300
Annual Burden Hours: 1075
Type of Request: Extension and Revision

Title: Client Verification and Evaluation Sheet
Form No.: SBA 1538
Frequency: Upon completion of services rendered
Description of Repondents: Recipients are required to provide this information. This data will provide adequate feedback on the client's progress and difficulties related to business operations
Annual Responses: 5,000
Annual Burden Hours: 1,667
Type of Request: Extension

Title: Bi-Monthly 7(j) Client Services Report
Form No.: SBA 1539
Frequency: Bi-Monthly
Description of Respondents: This form is to be completed by awardees (providers) of management and technical assistance
Annual Responses: 5,000
Annual Burden Hours: 1,667
Type of Request: Extension

Title: 7 (j) Monitoring: Client's Record on Assistance Rendered
Form No.: SBA 1540
Frequency: Upon completion of services rendered
Description of Respondents: The client is required to complete the form upon completion of the task. This information provides SBA with adequate feedback on the client's progress and difficulties related to business operations.
Annual Responses: 1,000
Annual Burden Hours: 500
Type of Request: Extension

Title: Disaster Loan Authorization and Agreement
Form No.: SBA 1366, 1391
Frequency: On occasion
Description of Respondents: Disaster victims who obtain physical injuries are required to provide this information.
Annual Responses: 19,733
Annual Burden Hours: 65,669
Type of Request: Extension and revision

Title: Liquidation Activities
Frequency: On occasion
Description of Respondents: The auctioneer contractor is required to submit information on the items of SBA collateral that was sold.
Annual Responses: 3,400
Annual Burden Hours: 34,000
Type of Request: Extension

Title: Lender Field Visit Report
Form No.: SBA 1183
Frequency: On occasion
Description of Respondents: The information for the completion of this form is collected by the loan officer at the time of the visit to the lender.
Annual Responses: 18,000
Annual Burden Hours: 18,000
Type of Request: Extension

Title: Loan Servicing Field Visit Report
Form No.: SBA 712
Frequency: On occasion
Description of Respondents: This form is completed by the SBA loan specialist visiting the SBA borrower at the site of the business to determine what assistance is necessary
Annual Responses: 63,000
Annual Burden Hours: 63,000
Type of Request: Extension

Dated: February 13, 1987.

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 87–3822 Filed 2–24–87; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 01/01–0341]

Application for a Small Business Investment Company License; Mezzanine Capital Corporation

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*) has been filed by Mezzanine Capital Corporation (Applicant), 45 Milk Street, Boston, Massachusetts 02109 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The officers, directors and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
David D. Croll, 25 Chestnut Street, Boston, MA 02108	President, Director	
Richard H. Churchill, Jr., 14 Wheeler Road, Lincoln, MA 01773.	Vice President, Clerk, Director	
Stephen F. Gormley, 23 Woodman Road, Chestnut Hill, MA 02167.	Vice President, Assistant Clerk, Director.	
William P. Collatos, 25 Fountain Street, West Newton, MA 02165.	Vice President, Assistant Clerk, Director.	
Marie Dixon, 9 Grace Road, Medford, MA 02155	Treasurer	
Media/Communications, Partners, Limited Partnership, 45 Milk Street, Boston, MA 02109.	Sole Shareholder	

TA Associates Communications Limited Partnership is the sole general partner of Media/Communications Partners Limited Partnership. The

limited partners who have contributed or who are committed to contribute 10 percent of the aggregate capital contributions made to Media/Communications Partners Limited Partnership are, New York Life Insurance Company; The Prudential Insurance Company of America c/o Prudential Venture Capital Management; Treasurer's Management Trust c/o Massachusetts Fidiciary Advisers, Inc; Boston Safe Deposit and Trust Company as Trustee for US West Master Trust.

The Applicant, a Massachusetts Corporation, will begin operations with $10,000,000 paid in capital and paid in surplus. The Applicant will conduct its activities primarily in the New England area but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 13, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–3821 Filed 2–24–87; 8:45 am]

BILLING CODE 8025–01–M

Minority Small Business and Capital Ownership Development; Management and Technical Assistance Application Announcement

SUMMARY: The Small Business Administration, Office of Minority Small Business and Capital Ownership Development (MSB&COD) announces that it is accepting applications/unsolicited proposals under its 7(j) program to provide management and technical assistance services nationally to eligible small business concerns/individuals who are SBA clients. Projects are to start when funds become available in FY 88.

The announcement number is MSB–88–001–01.

Funding Instrument: The funding instruments, as defined by the Federal Grants and Cooperative Agreements Act of 1977 (31 U.S.C. 6304/6305) will be cooperative agreements.

Program Description: The SBA provides management and technical assistance services to eligible small businesspersons with the goal of developing socially and economically disadvantaged small businesses in order that they may become competitively viable. In general, management and technical assistance includes, but is not limited to, those services which are provided to eligible businesses in the areas of planning and research, identification and development of new business opportunities, furnishing centralized services with regard to public services and Federal Government programs, business counseling, management training, legal and related services, establishment and strengthening of business service agencies (including trade associations and cooperatives), loan packaging, financial counseling, and marketing assistance. However, special emphasis is being placed on the areas of money (finance), marketing and management in order to develop new techniques and approaches to reaching our goal.

The announcement for proposals is designed to assist SBA's Office of MSB&COD in its goal of providing management and technical assistance to individuals or enterprises eligible for assistance under section 7(i) and 8(a) of the Small Business Act, as amended. These services will be especially geared to small business concerns located in urban and rural areas of high concentration of unemployed or low-income individuals and to 8(a) transitioning firms who have two years or less remaining on their Fixed Program Participation Term (FPPT). This announcement is national in scope to qualified concerns in order for the Office of MSB&COD to acquire innovative projects in these three areas. Consideration will be given to innovative projects which focus on activities related to the enhancement of management skills, development of financial resources, and international and private sector marketing opportunities. Priority will be given to the following types of projects:

1. Provide needed assistance to 8(a) transitioning firms (two years or less remaining on their Fixed Program Participation Term (FPPT)). This assistance may include, but not be limited to opportunities to develop non-8(a) governmental, commercial, and other markets.

2. Provide needed assistance to 8(a) firms which have not reached the transitional phase of their FPPT.

3. Provide needed assistance to minority firms by ethnic group and/or industry.

4. Impact minority business development organizations and Historically Black Colleges and Universities (HBCUs) who in turn provide needed assistance to minority firms by ethnic group and/or industry.

5. Support the general outreach needs of minority business development in these areas.

6. Provide assistance to minority business firms leveraging other resources from the private sector, other Federal, and/or state and local agencies.

7. Provide innovative seminars or sessions with opportunities for individuals and owners of firms to develop and implement strategies for growth.

8. Provide funding to business development organizations who will in turn provide management and technical assistance to eligible businesses and individuals.

9. Assist specific business sectors such as construction and manufacturing firms.

Closing Date: Applicants must submit their application/proposal on or before April 1, 1987, 5:00 p.m., local time, at the U.S. Small Business Administration, Office of Procurement and Grants Management, 1441 L Street, NW., in the designated official depository, Room 221, Washington, DC 20416.

Eligible Applicants: This announcement is open to for-profit buinesses, business development and trade associations, state and local governments and colleges and universities.

Application Materials: Applications will be forwarded to interested participants upon telephone request, contact Ms. Bernita Kane at (202) 653–5689 or Ms. Lillian Harris at (202) 653–6439 or upon written request to the U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development, Office of Private Industry Programs, 1441 L Street, NW., Room 602, Washington, DC 20416. All awards will be announced in the Federal Register and the Commerce Business Daily.

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA review panel. The awarding of

MSB&COD Cooperative Agreements is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing MSB&COD to divide available funds among all qualified applicants.

(59.007 Management and Technical Assistance to Disadvantaged Businesspersons.)

Dated: February 17, 1987.

Charles L. Heatherly,

Deputy Administrator.

[FR Doc. 87–3823 Filed 2–24–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1051]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on March 12, 1987 in room 521J of the National Aeronautics and Space Administration, 600 Independence Avenue, SW., Washington, DC. The meeting will begin at 10:00 a.m.

Study Group 2 deals with matters relating to the communications for scientific satellites, space probes, spacecraft, exploration satellites (e.g., meteorological and geodetic) and to interference problems concerning the radio astronomy and radar astronomy services. The purpose of the meeting is to discuss preparations for the Interim Meeting of International Study Group 2 in the fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone 202 647–2592.

Dated: February 17, 1986.

Richard E. Shrum,

Chairman U.S. CCIR National Committee.

[FR Doc. 87–3825 Filed 2–24–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S–801]

American President Lines, Ltd.; Application for Written Permission Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as Amended, and Article II–13 of Operating-Differential Subsidy Agreement, Contract MA/MSB–417 for Service to Hawaii

Notice is hereby given that American President Lines, Ltd. APL), has requested written permission to permit its subsidized vessels operating in Line A and Line B services as set forth in its Operating-Differential Subsidy Agreement, Contract MA/MSB–417 to call at Hawaii to provide service between California-Washington-Oregon and Hawaii. This application does not include service between Hawaii and foreign ports on the Operator's Line A and Line B services.

APL currently provides twice weekly sailings on Line A between California and the Far East with nine full containerships. The Operator also provides weekly sailings on its Line B service between Washington-Oregon and the Far East with five full containerships. The application is limited to no more than 52 sailings per year on Line A and/or Line B services calling at Hawaii.

APL States that its current intention is to provide weekly service to Hawaii from California, on regularly scheduled Line A sailings, calling Honolulu en route to the Far East. Although that is the operator's intention, APL also requests the Hawaii authority for its Line B service originating in Washington-Oregon, subject to an aggregate maximum of 52 sailings annually that would call Hawaii on Line A and/or Line B services.

In addition, APL wishes to provide service to the Neighbor Islands (the other principal islands of Hawaii besides Oahu) by feeder, using existing services or APL's own service.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in APL's application and desiring to submit comments must by 5:00 PM on March 9, 1987, file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: February 18, 1987.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 87–3819 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 18, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington DC 20220.

Internal Revenue Service

OMB Number: 1545–0668
Form Number: Letters 1671C, 1671(DO)), and 1671(SC)
Type of Review: Extension
Title: Second Request for Information to Handle Problem Resolution Case

OMB Number: 1545–0817
Form Number: None
Type of Review: Extension
Title: EE–28–78 FINAL: Public Inspection of Information Required of Exempt Organizations and Trusts

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–3813 Filed 2–24–87; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Quest for Eternity: Chinese Ceramic Sculpture from the People's Republic of China" (see list [1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, beginning on or about March 22, 1987, to on or about May 24, 1987; at the Museum of Fine Arts, Houston, Texas, beginning on or about June 28, 1987, to on or about September 6, 1987; at the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about October 15, 1987, to on or about January 3, 1988; and at the Cleveland Museum of Art, Cleveland, Ohio, beginning on or about February 10, 1988, to on or about April 10, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: February 20, 1987.

John A. Lindburg,

Acting General Counsel and Congressional Liaison.

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 18, 1987, 52 FR 4987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 18, 1987, 10:00 a.m.

CHANGE IN THE MEETING: The Commission meeting will be held in Room 9306 rather than Hearing Room A.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 87–3921 Filed 2–20–87; 10:40 am]
BILLING CODE 6717-02-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 19, 1987.

TIME AND DATE: 10:00 a.m., Thursday, February 26, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Youghiogheny & Ohio Coal Company,* Docket No. LAKE 84–98. (Issues include the propriety of the judge's entry of default; whether the judge erred in not remanding the matter to MSHA for reassessment in accordance with appropriate penalty regulations; and whether the judge's penalty findings are supported by substantial evidence.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87–4013 Filed 2–20–87; 3:50 pm]
BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 19, 1987.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 4989, Wednesday, February 18, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, February 19, 1987.

CHANGES IN THE MEETING: In addition to previously announced items, the Commission considered the following in open session:

1. *Secretary of Labor for Ronnie Beavers, et al. v. Kitt Energy Corporation,* WEVA 85–73–D. (Issues include consideration of a petition for discretionary review.)
2. *Jim Walter Resources, Inc.,* SE 86–29–R. (Consideration of petition for discretionary review.)
3. *Jim Walter Resources, Inc.,* SE 86–83. (Consideration of petition for discretionary review.)

The Commissioners determined that these items should be included in the meeting and that no earlier announcement of the additions was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87–4016 Filed 2–20–87; 3:55 pm]
BILLING CODE 6735-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE COMMISSION

DATE AND TIME: February 26–March 1, 1987.

PLACE: Airlie Foundation, Warrenton, Virginia.

STATUS:

February 26, 8:00 p.m. to 9:00 p.m.—Open
February 27, 9:00 a.m. to 9:00 p.m.—Open
February 28, 8:30 a.m. to 9:00 p.m.—Open
March 1, 1987, 9:00 a.m. to 12 noon—Open

MATTERS TO BE DISCUSSED:

February 26–28, 1987 Planning Sessions
- Speaker—"A Look Into the Future"
- Speaker—"Library and Information Services—the Administration View"
- Speaker—"Library and Information Services—the Congressional View"
- Speaker—"East/West Information Transfer"
- Panel—"Library/Information Issues
- Speaker—"The Impact of Technology"
- Administrative Matters—
  - Executive Director's Report
  - Budget Report
  - Committee Structure
  - Information Age Update
  - Proposed White House Conference Update

CONTACT: Vivian J. Arterbery, Executive Director, (202) 382–0840.

Submitted.

Jane D. McDuffie,
Staff Assistant.
February 18, 1987.
[FR Doc. 87–4017 Filed 2–20–87; 3:57 pm]
BILLING CODE 7527-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 23, March 2, 9, and 16, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 23

Monday, February 23

2:00 p.m.
Briefing on Consideration of Proposed Emergency Planning Rule Changes (Public Meeting)

Tuesday, February 24

2:30 p.m.
Discussion of Foreign Trip (Closed—Ex. 1)

Wednesday, February 25

10:00 a.m.
Briefing on Surry Incident (Public Meeting)
2:00 p.m.
Briefing on National Academy of Sciences Report, "Revitalizing Nuclear Safety Research" (Public Meeting)

Thursday, February 26

10:00 a.m.
Briefing on Status of and Possible Vote on Restricted Power Levels for Fort St. Vrain (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule 10 CFR 73.57, Implementing Requirements for Licensee Access to FBI Criminal History Data (Tentative) (*Postponed* from February 18)

Week of March 2—Tentative

Thursday, March 5

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 9—Tentative

Thursday, March 12

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle–1 (Public Meeting)
3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 16—Tentative

Monday, March 16

2:00 p.m.
Briefing on Status of TVA (Public Meeting)

Thursday, March 19

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Clinton (Public Meeting)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 20

10:00 a.m.
Discussion/Possible Vote on Restart of Palisades (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

February 19, 1987.

[FR Doc. 87–4014 Filed 2–20–87; 3:50 p.m.]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 23, 1987:

An open meeting will be held on Wednesday, February 25, 1987, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, February 25, 1987, at 10:00 a.m., will be:

1. Consideration of whether to: (1) Repropose Rule 26a–3 under the Investment Company Act of 1940 which would provide exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act to registered life insurance company separate accounts funding variable annuity contracts to permit them to deduct mortality and expense risk charges from account assets; (2) propose corresponding amendments to Rule 6e–3(T) which would provide the same exemptions to registered life insurance company separate accounts funding flexible premium variable life insurance contracts; (3) propose amendments to Forms N–3, N–4 and N–8B–2 to require additional disclosures regarding the use of proceeds from risk charges by insurance companies; and (4) repropose amendments to general Rule 0–1(e) of the Act. For further information, please contact David S. Goldstein at (202) 272–2622.

2. Consideration of whether to issue a release proposing for comment Securities Exchange Act Rules 3a43–1 and 3a44–1 to implement the provisions of the Government Securities Act of 1986, which authorizes the Commission after consultation with the Commodity Futures Trading Commission, to determine for purposes of exceptions in the definitions of "government securities broker" and "government securities dealer" that activities are incidental to the futures-related business of certain persons directly or indirectly regulated by the Commodity Futures Trading Commission. For further information, please contact Lynne G. Masters at (202) 272–2848.

The subject matter of the closed meeting scheduled for Wednesday, February 25, 1987, following the 10:00 a.m. open meeting, will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive action.
Litigation matter.
Administrative proceeding of an enforcement nature.
Formal orders of investigation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Shirley E. Hollis,

Assistant Secretary.

February 18, 1987.

[FR Doc. 87–3952 Filed 2–20–87; 11:25 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62048A; FRL-3135-7]

Regulations Required by the Asbestos Hazard Emergency Reponse Act of 1986

Correction

In proposed rule document 86-29354 beginning on page 47265 in the issue of Wednesday, December 31, 1986, make the following corrections:

1. On page 47265, in the first column, the FRL number is corrected as set forth above.

2. On the same page, in the same column, the heading **ADDRESS** should read, **ADDRESSES.**

3. On the same page, in the second column, in the first complete paragraph, in the second line, "Pa" should read "EPA".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51655; FRL-3136-7]

Certain Chemicals Premanufacture Notices

Correction

In notice document 86-29361 beginning on page 47307 in the issue of Wednesday, December 31, 1986, make the following corrections:

1. On page 47309, in the third column, under **P 87-365**, in the seventh line, "1,200" should read "2,000".

2. On the same page, in the same column, under **P 87-366**, in the ninth line, "1,200" should read "2,000".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180711; FRL-3136-5]

Emergency Exemptions; Metalaxyt, etc.

Correction

In notice document 86-29359 appearing on page 47304 in the issue of Wednesday, December 31, 1986, make the following corrections:

1. On page 47304, in the first column, in the **SUMMARY**, in the third line, the first word should read "pests".

2. On the same page, in the second column, from the 3rd, 4th and 5th lines, remove, "The exemptions, issued of Agriculture and Consumer Services.".

3. On the same page, in the same column, in the last paragraph numbered "1.", in the last line, the last word should read "corn".

4. On the same page, in the third column, in the last paragraph numbered "2.", in the second line, remove the last word "a".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

Proceedings To Determine Deportability of Aliens in the United States; Apprehension, Custody, Hearing, and Appeal

Correction

In rule document 87-1861 beginning on page 3098 in the issue of Friday, January 30, 1987, make the following corrections:

§ 242.1 [Corrected]

1. On page 3098, in the second column, in § 242.1(a), in the sixth line, "alien be" should read "alien shall be".

§ 242.2 [Corrected]

2. On page 3098, in the third column, in § 242.2(a)(1)(viii), "change" should read "charge".

§ 242.7 [Corrected]

3. On page 3099, in the third column, in § 242.7(a)(3), "deceased" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

St. Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls; Proposed Revision

Correction

In proposed rule document 87-2483 beginning on page 3826 in the issue of Friday, February 6, 1987, make the following correction:

§ 402.8 [Corrected]

On page 3827, in the third column, in § 402.8, in the table, in paragraph (a)(2), insert a zero to the left of each decimal point except for the entry in the second column opposite "Bulk cargo" and the entries in the first and second columns opposite "General cargo".

BILLING CODE 1505-01

federal register

Wednesday
February 25, 1987

Part II

Environmental Protection Agency

40 CFR Part 763

Asbestos Abatement Projects; Worker Protection; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62050; FRL 3104-1]

Asbestos Abatement Projects; Worker Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule, under section 6(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(a), extends additional protections to State and local government employees covered by the EPA asbestos abatement worker protection rule published in the **Federal Register** of April 25, 1986. This additional protection is provided by incorporating in the EPA rule the new asbestos workplace standard issued by the Occupational Safety and Health Administration (OSHA) in June 1986. EPA's worker protection rule of April 1986 had extended the protection of OSHA's previous asbestos workplace standard to employees in States that do not have either worker protection plans approved by OSHA or asbestos abatement regulations which EPA decided were comparable to or more stringent than EPA's worker protection rule.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on March 11, 1987. This rule is effective on March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 6(a) of TSCA authorizes EPA to impose a number of specific regulatory requirements concerning a chemical substance or mixture if the Agency finds that the manufacturing, processing, distribution in commerce, use, or disposal of the substance or mixture, or any combination of these activities presents or will present an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those in section 6(a) (5) and (6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture, or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

These subsections provide authority for EPA to issue this rule, which establishes requirements to protect State and local public employees engaged in abating the hazards of asbestos in public buildings. The asbestos present in such buildings has been sold as a commercial product, and therefore abatement activities affecting the use of asbestos in these buildings is commercial activity, subject to section 6(a)(5) of TSCA. The removal of asbestos, a disposal activity, will affect commercial activities occurring in the public buildings, and, therefore, is considered disposal for commercial purposes subject to section 6(a)(6).

II. Background

This rule replaces a final rule published in the **Federal Register** of April 25, 1986 (51 FR 15722). That rule was promulgated after EPA received and considered public comments on an immediately effective proposed rule published in the **Federal Register** of July 12, 1985 (50 FR 28530). In the previous final rule, EPA extended provisions of the then existing Asbestos Standard of the Occupational Safety and Health Administration (OSHA) to State and local government employees who were not covered by asbestos standards issued under State plans approved by OSHA, or other State regulations in Idaho, Kansas, Oklahoma, and Wisconsin that EPA had determined are comparable to or more stringent than the EPA rule. In that rule EPA announced that it would issue a revised rule when the OSHA standard was revised to ensure that all public and private sector employees who participate in asbestos abatement projects enjoy similar levels of protection. OSHA issued such a revised rule with detailed requirements for construction activities, including asbestos abatement projects, in the **Federal Register** of June 20, 1986 (51 FR 22612).

EPA also announced in the previous rule that it would issue the revised rule as a final rule with no additional comment period because EPA and OSHA had already received extensive comments on the topic of protection of workers engaged in abatement work (51 FR 15723). EPA is incorporating changes in this rule which have been suggested in comments to both agencies. In this rule, EPA is lowering the permissible exposure limit (PEL) to asbestos to 0.2 fiber per cubic centimeter of air (f/cc) and is instituting new requirements for engineering and work practice controls, and new requirements to train workers engaged in asbestos abatement.

III. The Relationship of This Rule to the OSHA Asbestos Standard

In general, this rule applies the major provisions of OSHA's new Asbestos Standard for construction work to asbestos abatement projects. This rule, however, differs from OSHA's because it retains certain features of EPA's previous final rule. It applies solely to activities involved in asbestos abatement projects, in contrast to the standard promulgated by OSHA, which applies generally to any construction activity involving exposure to asbestos. This rule also retains the definition of asbestos EPA has used in the previous final rule and, unlike OSHA's standard, does not cover non-asbestiform fibers.

This rule also differs from OSHA in retaining the reporting requirements published in the previous final EPA rule. EPA considers these requirements necessary to monitor compliance with the general provisions of the rule. Under § 763.124, employers, with certain exceptions, must notify EPA that they intend to undertake an abatement project covered by the rule at least 10 days before they begin abatement. The exceptions include all asbestos abatement projects involving less than 3 linear feet or 3 square feet of friable asbestos material, which employers need not report to EPA, and emergency projects which need not be reported in advance, but, instead, "as soon as possible but in no case more than 48 hours after the project begins."

Employers engaged in small-scale abatement projects should note that this rule imposes requirements which differ from those in the previous final rule. These requirements differ because EPA is incorporating OSHA's new provisions for small-scale, short-duration projects. Thus, under the new rule, employers whose workers are engaged in sampling or repair projects of less than 3 linear feet or 3 square feet are no longer excluded from all requirements as they were in EPA's previous final rule. Instead, consistent with OSHA, the new rule defines "small-scale", "short duration" projects in a qualitative way and generally imposes requirements different from, and less burdensome than, projects characterized as large-scale and long-duration (see Units V.C and G). Examples of typical small-scale,

short-duration projects are listed in Unit V.C.

EPA also wishes to clarify the reasons why it defines the term "fiber" in the same way as OSHA, i.e., as a "particulate form of asbestos 5 micrometers or longer, with a length to diameter ratio of at least 3 to 1." This definition is consistent with OSHA and avoids technical difficulties in measuring concentrations of smaller fibers. The definition does not result from a finding that small fibers are less harmful than other fibers. EPA refers readers to its previous discussion of fiber length in the preamble to the notice published in the **Federal Register** of January 29, 1986 entitled "Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation and Processing Prohibitions" (51 FR 3742) for an analysis of this issue.

IV. Provisions

EPA has retained in §§ 763.120, 763.124, 763.125, and 763.126 the same language concerning the scope of the rule, reporting requirements, enforcement and inspections as in the rule published in April 1986. Those sections are republished in this rule for the convenience of the reader. Section 763.121 of this rule establishes new regulatory requirements for the protection of State and local asbestos abatement workers. These requirements replace the requirements of the rule published in April 1986. The major new provisions are discussed below. Section 763.122 of this rule establishes the criteria for States to be excluded from this rule and the procedures for the submission and review of the regulations adopted by States which request exclusion. These criteria and procedures are summarized in Unit V. This document also corrects the authority citation for 40 CFR Part 763.

This rule is effective March 27, 1987. EPA is making this rule effective at this relatively early date so that protections for asbestos abatement workers in the public sector will be introduced at the same time as, or soon after, the lower permissible exposure level, work practices and engineering controls required by OSHA's standard for the construction industry.

A. Exposure Limits

In this rule, EPA establishes a new Permissible Exposure Limit (PEL) for workers exposed to airborne asbestos. In § 763.121(c), it sets the PEL as 0.2 fiber per cubic centimeter of air (f/cc), averaged over an 8-hour day. Employers (defined in this rule as the public department, agency or entity which hires an employee) must determine the PEL by means of the methods prescribed in Appendix A, the "EPA/OSHA Reference Method," or by an equivalent method, as described in Appendix B, "Detailed Procedures for Asbestos Sampling Analyses, Non-Mandatory." EPA will treat Transmission Electron Microscopy as an equivalent method for the purposes of this rule.

In § 763.121(b) the rule establishes the action level as 0.1 f/cc averaged over 8 hours. The action level is that level at which employers must begin activities such as air monitoring, employee training, and medical surveillance.

B. Air Monitoring

This rule establishes new requirements for initial and periodic air monitoring of workplaces where asbestos abatement projects take place. Section 763.121(f) requires that employers who have a workplace or work operation covered by this standard must generally perform initial monitoring to determine the airborne concentrations of asbestos to which employees may be exposed. If employers can demonstrate that employee exposures are below the action level by means of objective data, then initial monitoring is not required. If initial monitoring indicates that employee exposures are below the PEL, daily monitoring is not required. In certain areas designated as regulated areas (discussed in Unit V.C) the employer must conduct daily monitoring unless all workers are equipped with supplied-air respirators operated in the positive pressure mode. If daily monitoring within the regulated area indicates by statistically reliable measurements that employee exposures are below the action level, no further monitoring is required for those employees whose exposures are represented by such monitoring. Employees must be given the chance to observe monitoring, and affected employees must be notified as soon as possible following the employers' receipt of the results.

C. Regulated Areas

Where airborne concentrations of asbestos exceed the PEL, the employer must establish special areas, called regulated areas, to demarcate those places. Only authorized personnel may enter regulated areas. All persons entering a regulated area must be supplied with an approved respirator, and employers must ensure that these respirators are worn. No smoking, eating, drinking, or applying cosmetics is permitted in regulated areas. Warning signs stipulated in § 763.121(k) must be displayed at each regulated area and must be posted at all approaches to regulated areas.

Wherever feasible (i.e., wherever permitted by the physical characteristics of the space where asbestos abatement takes place), § 763.121(e)(6) requires that the employer establish negative-pressure enclosures before commencing asbestos removal, demolition, and renovation operations. In these enclosures, a competent person (described in Section H) must be designated to set up the enclosure and ensure its integrity and supervise employee activity within the enclosure. In addition, the employer must conduct daily monitoring that is representative of the exposure of each employee who is assigned to work within a regulated area unless all employees are equipped with supplied-air respirators.

Section 763.121(e)(6)(iv) establishes an exemption from the requirement to maintain negative-pressure enclosures in regulated areas for small-scale, short-duration operations, such as pipe repair, valve replacement, installing drywall and other general building maintenance and repair activities.

D. Methods of Compliance

EPA stipulates in § 763.121(g)(1) the engineering and work practice controls which must be used to reduce employee exposure to within the PEL. The employer must use one or any combination of the following control methods to achieve compliance: (1) Local exhaust ventilation equipped with High Efficiency Particulate Air (HEPA) filter dust collection systems; (2) general ventilation systems; (3) asbestos vacuum cleaners equipped with HEPA filters; (4) enclosure or isolation of asbestos dust-producing processes; (5) wet methods, wetting agents, or removal encapsulants used during asbestos handling, mixing, removal, cutting, application, and clean-up; and (6) prompt disposal of asbestos-containing wastes in leak-tight containers. Respiratory protection must be used where engineering and work practice controls have been instituted but are insufficient to reduce employee exposure to or below the PEL.

Section 763.121(g)(2) states that certain work practices are prohibited. These include: (1) The use of high speed abrasive disc saws that are not equipped with appropriate engineering controls; (2) the use of compressed air to remove asbestos-containing materials, unless the compressed air is used in conjunction with an enclosed ventilation system; and (3) the spray application of asbestos-containing materials.

E. Respiratory Protection

EPA requires in § 763.121(h) that employers provide respirators and have their employees use them in the following circumstances: (1) While feasible engineering and work practice controls are being installed or implemented; (2) during activities where engineering and work practice controls are not feasible; (3) if feasible engineering and work practice controls are insufficient to reduce employee exposure to or below the exposure limit; and (4) in emergencies. Respirators must be selected according to the provisions of 30 CFR Part 11. The employers must develop a respirator program, and EPA suggests that they develop one that follows the OSHA General Industry Standards (29 CFR 1910.134). Based on available data, EPA believes that this rule would require the wearing of respirators during many asbestos abatement projects.

The rule also requires in § 763.121(h)(3) that employees who use a filter respirator must change filters whenever an increase in breathing resistance is detected. Employees who wear respirators must be allowed to wash their faces and respirator facepieces whenever necessary to prevent skin irritation associated with respirator use. An employee must not be assigned to tasks requiring the use of respirators if a physician determines that the employee is unable to function normally wearing a respirator or that the employee's safety and health or that of others would be affected by the employee's use of a respirator. In this case, the employer must assign the employee to another job which does not require the use of a respirator. The job should be with the same employer in the same geographical area, and with the same seniority, status, and rate of pay, if such a position is available.

Section 763.121(h)(4) requires that the employer must assure that a respirator issued to an employee fits properly and exhibits minimum facepiece leakage. Employers must perform quantitative or qualitative fit tests at the time of initial fitting and at least every 6 months for each employee wearing negative-pressure respirators. Appendix C describes mandatory quantitative and qualitative procedures for testing respirators.

F. Protective Clothing

Section 763.121(i) of this rule establishes the general requirement that employers must provide and require the use of protective clothing such as coveralls or similar full body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos that exceed the PEL.

The section also stipulates that asbestos-contaminated work clothing must be removed in change rooms and placed and stored in closed, labeled containers which prevent dispersion of the asbestos into the ambient environment. Protective clothing and equipment must be cleaned, laundered, repaired, or replaced to maintain their effectiveness. EPA recommends the use of disposable protective clothing, but if nondisposable clothing is worn, the employer must inform any person who launders or cleans such asbestos-contaminated clothing of the potentially harmful effects of exposure to asbestos. Contaminated clothing and equipment taken out of change rooms or the workplace for cleaning, maintenance, or disposal must be transported in sealed impermeable bags, or other closed impermeable containers and be appropriately labeled.

G. Hygiene Facilities and Practices

In § 763.121(j), EPA requires that the employer provide clean change areas for employees required to work in regulated areas who wear respirators and protective clothing. Change areas are to be equipped with separate storage facilities for protective clothing and street clothing. Section 763.121(j)(2) requires that for asbestos removal, demolition, and renovation operations, the employer must establish a decontamination area for the decontamination of asbestos-contaminated employees. This area must be adjacent and connected to the regulated area. The section describes in detail the requirements for the decontamination area which must consist of an equipment room, shower area, and clean room in series.

Section 763.121(j) also provides an exclusion for employers of workers engaged in small-scale, short-duration projects. In lieu of the clean change area requirement, the employer may permit employees engaged in the operations to clean their protective clothing with a portable HEPA-equipped vacuum before employees leave the area where maintenance was performed.

H. Information and Training

Section 763.121(k)(3) requires that the employer develop a training program for all employees who are exposed to airborne concentrations of asbestos at or above the action level. Training must be provided prior to the time of initial assignment and at least yearly thereafter. The training program must inform employees about the methods of recognizing asbestos and the health hazards of asbestos exposure; the relationship between asbestos and smoking in producing lung cancer; operations which could result in asbestos exposure; the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures; the purpose, proper use, and limitations of respirators; and the medical surveillance program. All training materials must be available to the employees without cost and, upon request, to the EPA. The competent person who supervises activities in the regulated area must attend a comprehensive course on asbestos hazards and proper methods of abatement, such as the courses offered by EPA-approved Information Centers and Satellite Centers, or courses of similar length and content.

I. Housekeeping

Section 763.121(l) requires that vacuuming equipment, when used, must have HEPA filters. It also stipulates that asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing consigned for disposal must be collected and disposed of in sealed, labeled, impermeable bags or other closed, labeled, impermeable containers.

J. Medical Surveillance

Section 763.121(m) requires that the employer establish a medical surveillance program, prior to assignment, for all employees who will be required to wear respirators or who will be exposed to airborne concentrations of asbestos at or above the action level for 30 or more days per year. All examinations must be performed under the supervision of a licensed physician and shall be provided without cost to the employee and at a reasonable time and place. Examinations must include: A medical and work history and physical examination with special emphasis directed to the respiratory, cardiovascular, and gastrointestinal systems; completion of a respiratory disease questionnaire; a chest X-ray administered at the discretion of the physician; and pulmonary function tests. These examinations must be made available annually, and Appendix E, a mandatory "Medical Questionnaire," must be used.

The employer must give the examining physician: A copy of this rule and its Appendix E; a description of the employee's duties relating to the employees's asbestos exposure; the exposure level or anticipated exposure level; a description of any personal protective and respiratory equipment used or to be used; and information from previous medical examinations. The employer must obtain a written signed opinion from the physician as to whether the employee has any detected medical condition that would place the employee at an increased risk from exposure to asbestos, any recommended limitations on the employee or upon the use of personal protective equipment such as clothing or respirators, and a statement that the employee has been informed by the physician of the results of the medical examination. The physician is not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to asbestos. The employer must provide a copy of the physician's written opinion to the affected employee within 30 days from its receipt.

K. Recordkeeping

According to § 763.121(n), the employer must keep an accurate record of all measurements taken to monitor employee exposure to asbestos. This record should include: The date of measurement; operation involving exposure; sampling and analytical methods used, and evidence of their accuracy; number, duration and results of samples taken; type of respiratory protective devices worn; and name, social security number, and the results of all employee exposure measurements. This record must be kept for 30 years.

The employer must also maintain an accurate record for each employee subject to medical surveillance. The record must include: The name and social security number of the employee; a copy of the employee's medical complaints related to exposure to asbestos; and information provided to the examining physician as described under medical surveillance. This record must be maintained for the duration of employment plus 30 years. The employer must maintain all employee training records for 1 year beyond the last date of employment by that employee.

All records must be made available on request to the EPA, as well as to affected employees, former employees, and designated representatives. When the employer ceases to operate (e.g., because of consolidation of a school district or abolition of a special purpose district) and there is no successor employer to receive the records for the prescribed period, the employer must notify the Administrator of EPA at least 90 days prior to disposal of records.

V. Future Revisions and Exclusions for States

EPA realizes that it may be necessary to revise this rule in the future. Several parties have brought suit against OSHA challenging provisions of its Asbestos Standard. Should that litigation cause the need to revise the OSHA rule, EPA would revise the present rule to be consistent with any such revisions to the OSHA rule.

In § 763.122 EPA gives the four States which were exempt from the previous final rule 6 months, or such other reasonable time as suggested by the particular State and approved by EPA's Director of the Office of Toxic Substances, to revise their regulations to conform to the new standard. These States must submit any new regulations to the Agency for review. The Agency will review each submission to decide whether to continue excluding the State from coverage under the rule, or to amend the rule to cover the public employees in the State who are engaged in abatement work. Section 763.122(a)(1) of the rule establishes procedures for this review process.

If any other State now has or in the future adopts a regulation which is comparable to or more stringent than this rule and wishes to be excluded from this rule, that State should send a copy of the regulation to EPA's Office of Toxic Substances and request to be excluded from the rule. EPA will review the regulation, and, if it finds the regulation to be comparable to or more stringent than this rule, will propose an amendment excluding that State from coverage. Interested persons may then comment on the proposed exclusion during a period for public comment. After considering any comments, EPA could then promulgate a final amendment to the rule. These procedures are outlined in § 763.122(b) of the rule.

VI. Regulatory Assessment

EPA, in developing this final rule, has considered the requirements imposed by section 6(c)(1) of TSCA in order to determine whether asbestos or mixtures containing asbestos present an unreasonable risk. Specifically, it has considered the effects of the substance, or mixtures containing the substance, on health and the environment, and the magnitude of human and environmental exposure to the substance or mixture. It has also considered the benefits of the substance and the availability of substitutes and the reasonably ascertainable economic consequences of the rule. EPA incorporates the regulatory assessment made for the previous final rule (51 FR 15724), and assesses in this document only the incremental changes introduced by this rule.

A. Health Effects and Magnitude of Exposure to Asbestos

In the rule published in April, EPA reviewed the serious adverse human health effects associated with the use of asbestos. No additional analysis is needed for this rule. EPA's conclusions as to the health effects of asbestos were supported by the "Report to the United States Consumer Product Safety Commission (CPSC) by the Chronic Hazard Advisory Panel on Asbestos," (CHAP) (Ref. 1), "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule of Friable Asbestos-Containing Materials in School Buildings" (Ref. 2), and the "Report of the (National Research Council) Committee on Nonoccupational Health Risks of Asbestiform Fibers" (Ref. 3), and were summarized more recently in the preambles to EPA's proposal entitled "Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation and Processing Prohibitions" (51 FR 3738) and OSHA's final rule, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" (51 FR 22612).

The final rule published in April 1986 considered the nature of exposures to asbestos which occur in the course of abatement work, and this rule incorporates that analysis. This rule will lower the exposures due to asbestos abatement experienced by State and local public employees who take part in asbestos abatement work, State and local public employees, and building occupants, such as school children, hospital patients and visitors. It will do so because the rule lowers the PEL from 2.0 f/cc, the level set by the final rule published in August, to 0.2 f/cc, and it requires employers to provide respirators, and to establish engineering and work practice controls to reduce exposures to asbestos to this level.

B. Environmental Effects

Section 6(c) of TSCA requires that EPA state the relevant environmental factors and key considerations which form the basis for regulatory action under section 6(a). The unreasonable risk finding of this rule is based solely on risks to human health since these risks are by far the most serious consequence of unregulated removal,

enclosure, or encapsulations of friable asbestos material and are sufficient to support this rule.

C. Benefits of Asbestos Products and Availability of Substitutes

As in the previous final rule, EPA finds that the benefits of the asbestos-containing products affected by this rule are minimal. This rule applies only when persons have already decided to remove, enclose, or encapsulate friable asbestos material. These people presumably will have already determined that there are no benefits in using the asbestos-containing material in its present condition. In addition, there are adequate substitutes for the asbestos products that are being removed from buildings.

D. Economic Effects of the Rule

This portion of the preamble presents EPA's determination of the "reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health" as required by section 6(c)(1)(D) of TSCA.

EPA estimates that this rule will increase the cost of asbestos abatement to some extent beyond the costs stated in the preamble to the rule published in April (51 FR 15727). In its analysis of the costs of this rule (Ref. 5), EPA estimates that the rule would increase the cost of asbestos removal projects as follows:

	Cost/ project under old rule	Incremental increase in cost/ project under new rule	Projects/ year	Incremental increase in cost/ year	No. of years	Present value (r=10%)
School	15,000	$13,930	48	$668,640	4	$2,331,449
Offices	21,000	17,702	3	53,106	15	444,247
Hospitals	61,000	45,160	2	90,320	15	755,679
Boiler	5,000	5,237	9	47,133	15	394,356
Boiler/Pipes	3,000	1,965	9	17,685	15	134,513
Total						4,060,244

This analysis assumes the removal of all friable asbestos materials by the end of 15 years, with an accelerated schedule for asbestos removal in schools. EPA acknowledges that the estimate of asbestos abatement projects may be low, because it only considers removal, and thus may miss some maintenance and repair operations. However, even if the total number of asbestos abatement projects is higher than estimated by EPA, both the costs and the benefits of the rule will have been underestimated in roughly the same proportion.

This rule will not have a direct impact on small business, since it applies only to those public employees not covered by OSHA's Asbestos Standard. However, it may have indirect effects similar to those discussed in the rule published in April (51 FR 15727), and EPA incorporates that analysis here.

EPA does not believe that this rule will restrict technological innovation. The rule allows sufficient flexibility for the development of new technology concerning asbestos abatement.

E. Evaluation of Other Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce the risks to the workers associated with the removal, encapsulation, or enclosure of asbestos to a sufficient level.

The Agency has analyzed the Clean Air Act and the Resource Conservation and Recovery Act, and has come to the following conclusions. Although EPA does list asbestos as a hazardous air pollutant under the Clean Air Act, it does not have authority under that Act to issue regulations protecting workers exposed to indoor air containing asbestos fibers. The other law administered by EPA which regulates asbestos, the Resource Conservation and Recovery Act, does not give EPA authority to protect abatement workers, since it allows the Agency to regulate the substance only when it is ultimately placed in a disposal site.

Under section 9(a) of TSCA, EPA is required to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce a given risk. EPA cannot determine that there is a statute administered by another Federal agency that can prevent or reduce the risk presented to persons not covered by the OSHA Asbestos Standard during the removal, enclosure, or encapsulation of friable asbestos. EPA's analysis of this issue is in the preamble to the previous final rule (51 FR 15728) and is hereby adopted for this rule.

VII. Finding of Unreasonable Risk

EPA has weighed the health risks from asbestos abatement, as presently regulated, against the costs attributable to this regulation. In evaluating risks, it incorporates into its finding the determination made by OSHA in its notice published in the **Federal Register** of June 20, 1986 (51 FR 22612) that workers exposed to asbestos at the PEL of 2.0 f/cc face a significant risk to their health, and that the new final standard will reduce that risk. OSHA developed this finding after a lengthy rulemaking process and extended public hearings, and EPA believes that the safe finding applies to workers engaged in asbestos abatement in the public sector.

EPA estimates that the rule would increase the costs of asbestos abatement by a total of $4.0 million. This figure represents the present value of costs incurred over the next 15 years, assuming that all friable asbestos is abated. Although this rule may double the costs of some projects, the costs nonetheless are low, compared to benefits. If a State or local government has decided it can afford a project under the original final rule, the incremental cost under this amended rule should not be substantial. EPA believes that the possibility of reducing releases of asbestos during abatement under the new requirements justifies the increased costs.

EPA has concluded that the additional protection provided by this new rule outweighs the incremental costs of the control measures required, and that public employees engaged in asbestos abatement work should receive the same standard of protection as that set by OSHA for workers in the private sector. Therefore, EPA finds it is necessary to require that certain measures be taken to reduce the risk faced by asbestos abatement workers and persons using and visiting buildings during and after asbestos abatement activities.

VIII. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with this rule would be a violation of section 15 of TSCA. In

addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule.

IX. Rulemaking Record

EPA has established a record for this rulemaking under document control number OPTS–62050. A public version of the record and an index of documents in the record are available to the public in the Office of Toxic Substances Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–004, 401 M St., SW., Washington, DC.

The record includes information considered by EPA in developing this rule. The record now includes the following categories of information: (1) **Federal Register** notices, (2) support documents, (3) reports, and (4) memoranda and letters.

The record also includes by reference the rulemaking record compiled by OSHA as part of the revision of the OSHA Asbestos Standard and the rulemaking record for EPA's final rule published in April 1986.

X. References

(1) USCPSC, Reports to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory on Asbestos, July 1983.

(2) USEPA, OPTS, OTS, Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings—Health Effects and Magnitude of Exposure, January 1982.

(3) National Research Council, "Nonoccupational Health Risks of Asbestiform Fibers", National Academy Press, Washington, DC, 1984.

(4) USDOL, OSHA, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite." [June 20, 1986: 51 FR 22612].

(5) USEPA, OPTS, OTS, Revision to Asbestos Abatement Worker Protection Rule: Summary of Cost-Effectiveness Analysis, December 1986.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA prepared a Regulatory Impact Analysis. The Analysis estimated that this rule, would cost about $4.2 over 15 years. EPA believes that these costs are reasonable. Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices.

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

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this rule on small businesses. Reference to EPA's analysis appears in Unit VI.D.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.* and have been assigned OMB control number 2070–0072.

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 6, 1987.

Lee M. Thomas,

Administrator.

PART 763—[AMENDED]

Therefore, 40 CFR Part 763 is amended as follows:

1. The authority citation for Part 763 is revised to read as follows, and all of the section or subpart authorities are removed:

Authority: 15 U.S.C. 2605 and 2607(a).

2. Subpart G consisting of §§ 763.120 through 763.126 is revised to read as follows:

Subpart G—Asbestos Abatement Projects

Sec.

763.120 Scope.
763.121 Regulatory requirements.
763.122 Exclusions for States.
763.124 Reporting.
763.125 Enforcement.
763.126 Inspections.

Subpart G—Asbestos Abatement Projects

§ 763.120 Scope.

(a) This part establishes requirements which must be followed during asbestos abatement projects by employers of State and local government employees not covered by the Asbestos Standard of the Occupational Safety and Health Administration (OSHA), 29 CFR 1926.58, an Asbestos Standard adopted by a State as part of a State plan approved by OSHA under section 18 of the Occupational Safety and Health Act, or a State asbestos regulation which EPA has determined to be comparable to or more stringent than this part. The rule covers those employees who take part in asbestos abatement work.

(b) [Reserved]

§ 763.121 Regulatory requirements.

(a) [Reserved]

(b) *Definitions.* "Action level" means an airborne concentration of asbestos of 0.1 fiber per cubic centimeter (f/cc) of air calculated as an 8-hour time-weighted average.

"Administrator" means the Administrator, U.S. Environmental Protection Agency, or designee.

"Asbestos" means the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonit—grunerite); tremolite; anthophyllite, and actinolite.

"Asbestos abatement project" means any activity involving the removal, enclosure, or encapsulation of friable asbestos material.

"Authorized person" means any person authorized by the employer and required by work duties to be present in regulated areas.

"Clean room" means an uncontaminated room having facilities for the storage of employees' street clothing and uncontaminated materials and equipment.

"Competent person" means one who is capable of identifying existing asbestos hazards in the workplace and who has the authority to take prompt corrective measures to eliminate them. The duties of the competent person include at least the following: Establishing the negative-pressure enclosure, ensuring its integrity, and controlling entry to and exit from the enclosure; supervising any employee exposure monitoring required by this subpart, ensuring that all employees working within such an enclosure wear the appropriate personal protective equipment, are trained in the use of appropriate methods of exposure control, and use the hygiene facilities

and decontamination procedures specified in this subpart; and ensuring that engineering controls in use are in proper operating condition and are functioning properly.

"Decontamination area" means an enclosed area adjacent and connected to the regulated area and consisting of an equipment room, shower area, and clean room, which is used for the decontamination of workers, materials, and equipment contaminated with asbestos.

"Demolition" means the wrecking or taking out of any load-supporting structural member and any related razing, removing, or stripping of asbestos products.

"Emergency project" means a project involving the removal, enclosure, or encapsulation of friable asbestos-containing material that was not planned but results from a sudden unexpected event.

"Employee exposure" means that exposure to airborne asbestos would occur if the employee were not using respiratory protective equipment.

"Employer" means the public department, agency, or entity which hires an employee. The term includes, but is not limited to, any State, County, City, or other local governmental entity which operates or administers schools, a department of health or human services, a library, a police department, a fire department, or similar public service agencies or offices.

"Equipment room (change room)" means a contaminated room located within the decontamination area that is supplied with impermeable bags or containers for the disposal of contaminated protective clothing and equipment.

"Fiber" means a particulate form of asbestos, 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1.

"Friable asbestos material" means any material containing more than 1 percent asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

"High-efficiency particulate air (HEPA) filter" means a filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometer in diameter or larger.

"Regulated area" means an area established by the employer to demarcate areas where airborne concentrations of asbestos exceed or can reasonably be expected to exceed the permissible exposure limit. The regulated area may take the form of: (1) A temporary enclosure, as required by paragraph (e)(6) of this section, or (2) an area demarcated in any manner that minimizes the number of employees exposed to asbestos.

"Removal" means the taking out or stripping of asbestos or materials containing asbestos.

"Renovation" means the modifying of any existing structure, or portion thereof, where exposure to airborne asbestos may result.

"Repair" means overhauling, rebuilding, reconstructing, or reconditioning of structures or substrates where asbestos is present.

(c) *Permissible exposure limit (PEL).* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.2 fiber per cubic centimeter of air as an 8-hour time-weighted average (TWA), as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(d) *Communication among employers.* On multi-employer worksites, an employer performing asbestos work requiring the establishment of a regulated area shall inform other employers (as defined by this subpart and by 29 U.S.C. section 652(5)) on the site of the nature of the employer's work with asbestos and of the existence of and requirements pertaining to regulated areas.

(e) *Regulated areas*—(1) *General.* The employer shall establish a regulated area in work areas where airborne concentrations of asbestos exceed or can reasonably be expected to exceed the permissible exposure limit prescribed in paragraph (c) of this section.

(2) *Demarcation.* The regulated area shall be demarcated in any manner that minimizes the number of persons within the area and protects persons outside the area from exposure to airborne concentrations of asbestos in excess of the permissible exposure limit.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Respirators.* All persons entering a regulated area shall be supplied with a respirator, selected in accordance with paragraph (h)(2) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in the regulated area.

(6) *Requirements for asbestos removal, demolition, and renovation operations.* (i) Wherever feasible, the employer shall establish negative-pressure enclosures before commencing removal, demolition, and renovation operations.

(ii) The employer shall designate a competent person to perform or supervise the following duties:

(A) Set up the enclosure.

(B) Ensure the integrity of the enclosure.

(C) Control entry to and exit from the enclosure.

(D) Supervise all employee exposure monitoring required by this section.

(E) Ensure that employees working within the enclosure wear respirators and protective clothing as required by paragraphs (h) and (i) of this section.

(F) Ensure that employees are trained in the use of engineering controls, work practices, and personal protective equipment.

(G) Ensure that employees use the hygiene facilities and observe the decontamination procedures specified in paragraph (j) of this section.

(H) Ensure that engineering controls are functioning properly.

(iii)(A) In addition to the qualifications specified in paragraph (b) of this section, the competent person shall be trained in all aspects of asbestos abatement, the contents of this subpart, the identification of asbestos and its removal procedures, and other practices for reducing the hazard. Such training shall be obtained in a comprehensive course, such as a course conducted by an EPA Asbestos Training Center, or an equivalent course.

(B) For small-scale, short-duration operations, such as pipe repair, valve replacement, installing electrical conduits, installing or removing drywall, roofing, and other general building maintenance or renovation, the employer is not required to comply with the requirements of paragraph (e)(6) of this section.

(f) *Exposure monitoring*—(1) *General.* (i) Each employer who has a workplace or work operation covered by this subpart shall perform monitoring to determine accurately the airborne concentrations of asbestos to which employees may be exposed.

(ii) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA of each employee.

(iii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing fullshift exposure for employees in each work area.

(2) *Initial monitoring.* (i) Each employer who has a workplace or work operation covered by this subpart, except as provided for in paragraphs (f)(2)(ii) and (iii) of this section, shall perform initial monitoring at the initiation of each asbestos job to determine accurately the airborne concentrations of asbestos to which employees may be exposed.

(ii) The employer may demonstrate that employee exposures are below the action level by means of objective data demonstrating that the product or material containing asbestos cannot release airborne fibers in concentrations exceeding the action level under those work conditions having the greatest potential for releasing asbestos.

(iii) Where the employer has monitored each asbestos job, and the data were obtained during work operations conducted under workplace conditions closely resembling the processes, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (f)(2)(i) of this section.

(3) *Periodic monitoring within regulated areas.* (i) The employer shall conduct daily monitoring that is representative of the exposure of each employee who is assigned to work within a regulated area.

(ii) When all employees within a regulated area are equipped with supplied-air respirators operated in the positive-pressure mode, the employer may dispense with the daily monitoring required by this paragraph.

(4) *Termination of monitoring.* If the periodic monitoring required by paragraph (f)(3)(i) of this section reveals that employee exposures, as indicated by statistically reliable measurements, are below the action level, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring.

(5) *Method of monitoring.* (i) All samples taken to satisfy the monitoring requirements of paragraph (f) of this section shall be personal samples collected following the procedures specified in Appendix A of this section.

(ii) All samples taken to satisfy the monitoring requirements of paragraph (f) of this section shall be evaluated using the EPA/OSHA Reference Method (ORM) specified in Appendix A, or an equivalent counting method.

(iii) If an equivalent method to the ORM is used, the employer shall ensure that the method meets the following criteria:

(A) Replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons.

(B) The comparison indicates that 90 percent of the samples collected in the range 0.5 to 2.0 times the permissible limit have an accuracy range of plus or minus 25 percent of the ORM results with a 95 percent confidence level as demonstrated by a statistically valid protocol.

(C) The equivalent method is documented and the results of the comparison testing are maintained.

(iv) To satisfy the monitoring requirements of paragraph (f) of this section, employers shall rely on the results of monitoring analysis performed by laboratories that have instituted quality assurance programs that include the elements prescribed in Appendix A of this section.

(6) *Employee notification of monitoring results.* (i) The employer shall notify affected employees of the monitoring results that represent the employees' exposure as soon as possible following receipt of monitoring results.

(ii) The employer shall notify affected employees of the results of monitoring representing the employees' exposure in writing either individually or by posting at a centrally located place that is accessible to affected employees.

(7) *Observation of monitoring.* (i) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to asbestos conducted in accordance with this section

(ii) When observation of the monitoring of employee exposure to asbestos requires entry into an area where the use of protective clothing or equipment is required, the observer shall be provided with and be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(g) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall use one or any combination of the following control methods to achieve compliance with the permissible exposure limit prescribed by paragraph (c) of this section:

(A) Local exhaust ventilation equipped with HEPA filter dust collection systems.

(B) General ventilation systems.

(C) Vacuum cleaners equipped with HEPA filters.

(D) Enclosure or isolation of processes producing asbestos dust.

(E) Use of wet methods, wetting agents, or removal encapsulants to control employee exposures during asbestos handling, mixing, removal, cutting, application, and cleanup.

(F) Prompt disposal of wastes contaminated with asbestos in leak-tight containers.

(G) Use of work practices or other engineering controls that the Administrator can show to be feasible.

(ii) Wherever the feasible engineering and work practice controls described in this paragraph are not sufficient to reduce employee exposure to or below the limit prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to the lowest levels attainable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (h) of this section.

(2) *Prohibitions.* (i) High-speed abrasive disc saws that are not equipped with appropriate engineering controls shall not be used for work related to asbestos.

(ii) Compressed air shall not be used to remove asbestos materials containing asbestos unless the compressed air is used in conjunction with an enclosed ventilation system designed to capture the dust cloud created by the compressed air.

(iii) Materials containing asbestos shall not be applied by spray methods.

(3) *Employee rotation.* The employer shall not use employee rotation as a means of compliance with the exposure limit prescribed in paragraph (c) of this section.

(h) *Respiratory protection*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls.

(ii) In work operations such as maintenance and repair activities, or other activities for which engineering and work practice controls are not feasible.

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the exposure limit.

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are used, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1 in paragraph (iv), and shall ensure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved as being acceptable for protection by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(iii) The employer shall provide a powered, air-purifying respirator in lieu

of any negative-pressure respirator specified in Table 1 whenever:

(A) An employee chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(iv) Table 1—Respiratory Protection for Asbestos Fibers.

TABLE 1.—RESPIRATORY PROTECTION FOR ASBESTOS FIBERS

Airborne concentration of asbestos	Required respirator
Not in excess of 2 f/cc (10×PEL).	1. Half-mask air-purifying respirator equipped with high-efficiency filters.
Not in excess of 10 f/cc (50×PEL).	1. Full facepiece air-purifying respirator equipped with high-efficiency filters.
Not in excess of 20 f/cc (100×PEL).	1. Any powered air-purifying respirator equipped with high-efficiency filters. 2. Any supplied-air respirator operated in continuous flow mode.
Not in excess of 200 f/cc (1,000×PEL).	1. Full facepiece supplied-air respirator operated in pressure demand mode.
Greater than 200 f/cc (>1,000×PEL) or unknown concentration.	1. Full facepiece supplied air respirator operated in pressure demand mode equipped with an auxiliary positive pressure selfcontained breathing apparatus.

Note.—a. Respirators assigned for higher environmental concentrations may be used at lower concentrations.

b. A high-efficiency filter means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers in diameter or larger.

(3) *Respirator program.* (i) Where respiratory protection is used, the employee shall institute a respirator program. This should include all information and guidance necessary for their proper selection, use, and care. Possible emergency uses of respirators should be anticipated and planned for.

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their faces and respirator facepieces whenever necessary to prevent skin irritation associated with respirator use.

(iv) No employee shall be assigned to tasks requiring the use of respirators if, based on his or her most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or of other employees will be impaired by the use of a respirator. Such employee shall be assigned to another job or given the opportunity to transfer to a different position, the duties of which he or she is able to perform, with the same employer, in the same geographical area, and with the same seniority, status, and rate of pay he or she had just prior to such transfer, if such a different position is available.

(4) *Respirator fit testing.* (i) The employer shall ensure that the respirator issued to the employee exhibits the least possible facepiece leakage and that the respirator is fitted properly.

(ii) Employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every 6 months thereafter for each employee wearing a negative-pressure respirator. The qualitative fit tests may be used only for testing the fit of half-mask respirators where they are permitted to be worn, and shall be conducted in accordance with Appendix C of this section. The tests shall be used to select facepieces that provide the required protection as prescribed in Table 1.

(i) *Protective clothing*—(1) *General.* The employer shall provide and require the use of protective clothing, such as coveralls or similar whole-body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos that exceed the permissible exposure limit prescribed in paragraph (c) of this section.

(2) *Laundering.* (i) The employer shall ensure that laundering of contaminated clothing is done so as to prevent the release of airborne asbestos in excess of the exposure limit prescribed in paragraph (c) of this section.

(ii) Any employer who gives contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (i)(2)(i) of this section effectively to prevent the release of airborne asbestos in excess of the exposure limit prescribed in paragraph (c) of this section.

(3) *Contaminated clothing.* Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and be labeled in accordance with paragraph (k) of this section.

(4) *Protective clothing for removal, demolition, and renovation operations.* (i) The competent person shall periodically examine worksuits worn by employees for rips or tears that may occur during performance of work.

(ii) When rips or tears are detected while an employee is working within a negative-pressure enclosure, rips and tears shall be immediately mended, or the worksuit shall be immediately replaced.

(j) *Hygiene facilities and practices*—(1) *General.* (i)(A) The employer shall provide clean change areas for employees required to work in regulated areas or required by paragraph (i)(1) of this section to wear protective clothing.

(B) In lieu of the change area requirement specified in paragraph (j)(1)(i), the employer may permit employees engaged in small-scale, short-duration operations, as described in paragraph (e)(6) of this section, to clean their protective clothing with a portable HEPA-equipped vacuum before such employees leave the area where maintenance was performed.

(ii) The employer shall ensure that change areas are equipped with separate storage facilities for protective clothing and street clothing.

(iii) Whenever food or beverages are consumed at the worksite and employees are exposed to airborne concentrations of asbestos in excess of the permissible exposure limit, the employer shall provide lunch areas in which the airborne concentrations of asbestos are below the action level.

(2) *Requirements for removal, demolition, and renovation operations*—(i) *Decontamination area.* Except for small-scale, short-duration operations, as described in paragraph (e)(6) of this section, the employer shall establish a decontamination area that is adjacent and connected to the regulated area for the decontamination of employees contaminated with asbestos. The decontamination area shall consist of an equipment room, shower area, and clean room in series. The employer shall ensure that employees enter and exit the regulated area through the decontamination area.

(ii) *Clean room.* The clean room shall be equipped with a locker or appropriate storage container for each employee's use.

(iii) *Shower area.* Where feasible, shower facilities shall be provided. The showers shall be contiguous both to the equipment room and the clean change room, unless the employer can demonstrate that this location is not feasible. Where the employer can demonstrate that it is not feasible to locate the shower between the equipment room and the clean change room, the employer shall ensure that employees:

(A) Remove asbestos contamination from their worksuits using a HEPA vacuum before proceeding to a shower that is not contiguous to the work area; or

(B) Remove their contaminated worksuits, don clean worksuits, and proceed to a shower that is not contiguous to the work area.

(iv) *Equipment room.* The equipment room shall be supplied with

impermeable, labeled bags and containers for the containment and disposal of contaminated protective clothing and equipment.

(v) *Decontamination area entry procedures.* (A) The employer shall ensure that employees:

(*1*) Enter the decontamination area through the clean room.

(*2*) Remove and deposit street clothing within a locker provided for their use.

(*3*) Put on protective clothing and respiratory protection before leaving the clean room.

(B) The employer shall ensure that employees pass through the equipment room before entering the enclosure.

(vi) *Decontamination area exit procedures.* (A) The employer shall ensure that employees remove all gross contamination and debris from their protective clothing before leaving the regulated area.

(B) The employer shall ensure that employees remove their protective clothing in the equipment room and deposit the clothing in labeled impermeable bags or containers.

(C) The employer shall ensure that employees do not remove their respirators in the equipment room.

(D) The employer shall ensure that employees shower prior to entering the clean room.

(E) The employer shall ensure that, after showering, employees enter the clean room before changing into street clothes.

(k) *Communication of hazards to employees*—(1) *Signs.* (i) Warning signs that demarcate the regulated area shall be provided and displayed at each location where airborne concentrations of asbestos may be in excess of the exposure limit prescribed in paragraph (c) of this section. Signs shall be posted at such a distance from such a location that an employee may read the signs and take necessary protective steps before entering the area marked by the signs.

(ii) The warning signs required by paragraph (k)(1)(i) of this section shall bear the following information:

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA

(2) *Labels.* (i) Labels shall be affixed to all products containing asbestos and to all containers containing such products, including waste containers. Where feasible, installed asbestos products shall contain a visible label.

(ii) Labels shall be printed in large, bold letters on a contrasting background.

(iii) Labels shall be used and shall contain the following information:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

(iv) [Reserved]

(v) Labels shall contain a warning statement against breathing airborne asbestos fibers.

(vi) The provisions for labels required by paragraph (k)(2)(i) of this section do not apply where:

(A) Asbestos fibers have been modified by a bonding agent, coating, binder, or other material, provided that the manufacturer can demonstrate that, during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the action level will be released or

(B) Asbestos is present in a product in concentrations less than 0.1 percent by weight.

(3) *Employee information and training.* (i) The employer shall institute a training program for all employees exposed to airborne concentrations of asbestos in excess of the action level and shall ensure their participation in the program.

(ii) Training shall be provided prior to or at the time of initial assignment, unless the employee has received equivalent training within the previous 12 months, and at least annually thereafter.

(iii) The training program shall be conducted in a manner that the employee is able to understand. The employer shall ensure that each employee is informed of the following:

(A) Methods of recognizing asbestos.

(B) The health effects associated with asbestos exposure.

(C) The relationship between smoking and asbestos in producing lung cancer.

(D) The nature of operations that could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures, and any necessary instruction in the use of these controls and procedures.

(E) The purpose, proper use, fitting instructions, and limitations of respirators.

(F) The appropriate work practices for performing the asbestos job; and

(G) Medical surveillance program requirements.

(H) A review of this subpart, including appendices.

(4) *Access to training materials.* (i) The employer shall make readily available to all affected employees without cost all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Administrator upon request, all information and training materials relating to the employee information and training program.

(l) *Housekeeping*—(1) *Vacuuming.* Where vacuuming methods are selected, HEPA filtered vacuuming equipment must be used. The equipment shall be used and emptied in a manner that minimizes the reentry of asbestos into the workplace.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal shall be collected and disposed of in sealed, labeled, impermeable bags or other closed, labeled, impermeable containers.

(m) *Medical surveillance*—(1) *General—(i)—Employees covered.* The employer shall institute a medical surveillance program for all employees engaged in work involving levels of asbestos at or above the action level for 30 or more days per year, or who are required by this section to wear negative-pressure respirators.

(ii) *Examination by a physician.* (A) The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and are provided at no cost to the employee and at a reasonable time and place.

(B) Persons other than such licensed physicians who administer the pulmonary function testing required by this section shall complete a training course in spirometry sponsored by an appropriate academic or professional institution.

(2) *Medical examinations and consultation*—(i) *Frequency.* The employer shall make available medical examinations and consultations to each employee covered under paragraph (m)(1)(i) of this section on the following schedules:

(A) Prior to assignment of the employee to an area where negative-pressure respirators are worn.

(B)(*1*) When the employee is assigned to an area where exposure to asbestos may be at or above the action level for

30 or more days per year, a medical examination must be given within 10 working days following the thirtieth day of exposure.

(2) No medical examination is required of any employee if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(C) At least annually thereafter.

(D) If the examining physician determines that any of the examinations should be provided more frequently than specified, the employer shall provide such examinations to affected employees at the frequencies specified by the physician.

(ii) *Content.* Medical examinations made available pursuant to paragraphs (m)(2)(i) (A), (B), and (C) of this section shall include:

(A) A medical and work history with special emphasis directed to the pulmonary, cardiovascular, and gastrointestinal systems.

(B) On initial examination, the standardized questionnaire contained in Appendix D, Part 1 of this section and, on annual examination, the abbreviated standardized questionnaire contained in Appendix D, Part 2 of this section.

(C) A physical examination directed to the pulmonary and gastrointestinal systems, including a chest roentgenogram to be administered at the discretion of the physician, and pulmonary function tests of forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1). Interpretation and classification of chest roentgenograms shall be conducted in accordance with Appendix E of this section.

(D) Any other examinations or tests deemed necessary by the examining physician.

(3) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this rule and Appendices D, E, and I of this section.

(ii) A description of the affected employee's duties as they relate to the employee's exposure.

(iii) The employee's representative exposure level or anticipated exposure level.

(iv) A description of any personal protective and respiratory equipment used or to be used.

(v) Information from previous medical examinations of the affected employee that is not otherwise available to the examining physician.

(4) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination and shall include:

(A) The physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of material health impairment from exposure to asbestos.

(B) Any recommended limitations on the employee or on the use of personal protective equipment such as respirators.

(C) A statement that the employee has been informed by the physician of the results of the medical examinations and of any medical conditions that may result from asbestos exposure.

(ii) The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to asbestos.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 30 days from its receipt.

(n) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the employer has relied on objective data that demonstrate that products made from or containing asbestos are not capable of releasing fibers of asbestos in concentrations at or above the action level under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) The record shall include at least the following information:

(A) The product qualifying for exemption.

(B) The source of the objective data.

(C) The testing protocol, results of testing, and/or analysis of the material for the release of asbestos.

(D) A description of the operation exempted and how the data support the exemption.

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure measurements.* (i)(A) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to asbestos as prescribed in paragraph (f) of this section.

(B) The employer may utilize the services of competent organizations such as employee associations to maintain the records required by this section.

(ii) This record shall include at least the following information:

(A) The date of measurement.

(B) The operation involving exposure to asbestos that is being monitored.

(C) Sampling and analytical methods used and evidence of their accuracy.

(D) Number, duration, and results of samples taken.

(E) Type of protective devices worn, if any.

(F) Name, social security number, and exposure of the employees whose exposures are represented.

(iii) The employer shall maintain this record for at least 30 years.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (m) of this section.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee.

(B) A copy of the employee's medical examination results, including the medical history, questionnaire responses, results of any tests, and physician's recommendations.

(C) Physician's written opinions.

(D) Any employee medical complaints related to exposure to asbestos.

(E) A copy of the information provided to the physician as required by paragraph (m) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus 30 years.

(4) *Training records.* The employer shall maintain all employee training records for 1 year beyond the last date of employment by that employer.

(5) *Availability.* (i) The employer, upon request, shall make all records required to be maintained by this section available to the Administrator for examination and copying.

(ii) The employer, upon request, shall make any exposure records required by paragraphs (f) and (n) of this section available for examination and copying to affected employees, former employees, designated representatives, and the Administrator.

(iii) The employer, upon request, shall make employee medical records required by paragraphs (m) and (n) of this section available for examination and copying to the subject employee, anyone having the specific written consent of the subject employee, and the Administrator.

(6) *Transfer of records.* Whenever the employer ceases to operate and there is no successor employer to receive and

retain the records for the prescribed period, the employer shall notify the Administrator at least 90 days prior to disposal and, upon request, transmit them to the Administrator.

(o) *Effective date.* This section shall become effective March 27, 1987.

(p) *Appendices.* (1) Appendices A, C, D, and E to this section are incorporated as part of this section and the contents of these appendices are mandatory.

(2) Appendix B to this section is informational and is not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

Appendix A To § 763.121—EPA/OSHA Reference Method—Mandatory

This mandatory appendix specifies the procedure for analyzing air samples for asbestos and specifies quality control procedures that must be implemented by laboratories performing the analysis. The sampling and analytical methods described below represent the elements of the available monitoring methods essential to achieve adequate employee exposure monitoring while allowing employers to use methods that are already established within their organizations. All employers who are required to conduct air monitoring under § 763.121(f) are required to utilize analytical laboratories that use this procedure, or an equivalent method for collecting and analyzing samples.

Sampling and Analytical Procedure

1. The sampling medium for air samples shall be mixed cellulose ester filter membranes. These shall be designated by the manufacturer as suitable for asbestos counting. See below for rejection of blanks.

2. The preferred collection device shall be the 25-mm diameter cassette with an open-faced 50-mm extension cowl. The 37-mm cassette may be used if necessary, but only if written justification for the need to use the 37-mm filter cassette accompanies the sample results in the employee's exposure monitoring record.

3. An air flow rate between 0.5 liter/min and 2.5 liters/min shall be selected for the 25-mm cassette. If the 37-mm cassette is used, an air flow rate between 1 liter/min and 2.5 liters/min shall be selected.

4. Where possible, a sufficient air volume for each air sample shall be collected to yield between 100 and 1,300 fibers per square millimeter on the membrane filter. If a filter darkens in appearance or if loose dust is seen on the filter, a second sample shall be started.

5. Ship the samples in a rigid container with sufficient packing material to prevent dislodging the collected fibers. Packing material that has a high electrostatic charge on its surface (e.g., expanded polystyrene) cannot be used because such material can cause loss of fibers to the sides of the cassette.

6. Calibrate each personal sampling pump before and after use with a representative filter cassette installed between the pump and the calibration devices.

7. Personal samples shall be taken in the "breathing zone" of the employee (i.e., attached to or near the collar or lapel near the worker's face).

8. Fiber counts shall be made by positive phase contrast using a microscope with an 8 to 10 X eyepiece and a 40 to 45 X objective for a total magnification of approximately 400 X and a numerical aperture of 0.65 to 0.75. The microscope shall also be fitted with a green or blue filter.

9. The microscope shall be fitted with a Walton-Beckett eyepiece graticule calibrated for a field diameter of 100 micrometers (± 2 micrometers).

10. The phase-shift detection limit of the microscope shall be about 3 degrees measured using the HSE phase shift test slide as outlined below.

a. Place the test slide on the microscope stage and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note.—The slide consists of seven sets of grooved lines (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7, seven being the least visible. The requirements for asbestos counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 and 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope that fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image deteriorates, clean and adjust the microscope optics. If the problem persists, consult the microscope manufacturer.

11. Each set of samples taken will include 10 percent blanks or a minimum of 2 blanks. The blank results shall be averaged and subtracted from the analytical results before reporting. Any samples represented by a blank having a fiber count in excess of 7 fibers/100 fields shall be rejected.

12. The samples shall be mounted by the acetone/triacetin method or a method with an equivalent index of refraction and similar clarity.

13. Observe the following counting rules.

a. Count only fiber equal to or longer than 5 micrometers. Measure the length of curved fibers along the curve.

b. Count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3:1 or greater.

c. Fibers lying entirely within the boundary of the Walton-Beckett graticule field shall receive a count of 1. Fibers crossing the boundary once, having one end within the circle, shall receive the count of one-half (½). Do not count any fiber that crosses the graticule boundary more than once. Reject and do not count any other fibers even though they may be visible outside the graticule area.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of an individual fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields; stop counting at 100 fields regardless of fiber count.

14. Blind recounts shall be conducted at the rate of 10 percent.

Quality Control Procedures

1. *Intralaboratory program.* Each laboratory and/or each company with more than one microscopist counting slides shall establish a statistically designed quality assurance program involving blind recounts and comparisons between microscopists to monitor the variability of counting by each microscopist and between microscopists. In a company with more than one laboratory, the program shall include all laboratories and shall also evaluate the laboratory-to-laboratory variability.

2. *Interlaboratory program.* Each laboratory analyzing asbestos samples for compliance determination shall implement an interlaboratory quality assurance program that as a minimum includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every 6 months with at least all the other laboratories in its interlaboratory quality assurance group. Each laboratory shall submit slides typical of its own work load for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology.

3. All individuals performing asbestos analysis must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equivalent course.

4. When the use of different microscopes contributes to differences between counters and laboratories, the effect of the different microscope shall be evaluated and the microscope shall be replaced, as necessary.

5. Current results of these quality assurance programs shall be posted in each laboratory to keep the microscopists informed.

Appendix B to § 763.121—Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory

This appendix contains a detailed procedure for sampling and analysis and includes those critical elements specified in Appendix A of this section. Employers are not required to use this procedure, but they are required to use Appendix A of this section. The purpose of Appendix B of this section is to provide a detailed step-by-step sampling and analysis procedure that conforms to the elements specified in Appendix A of this section. Since this procedure may also standardize the analysis and reduce variability, EPA encourages employers to use this appendix.

Technique: Microscopy, Phase Contrast.

Analyte: Fibers (manual count).

Sample Preparation: Acetone/triacetin method.

Calibration: Phase-shift detection limit about 3 degrees.

Range: 100 to 1,300 fibers/mm ^{2} filter area.

Estimated Limit of Detection: 7 fibers/mm ^{2} filter area.

Sampler: Filter (0.8–1.2 μm mixed cellulose ester membrane, 25-mm diameter).

Flow Rate: 0.5 l/min to 2.5 l/min (25-mm cassette); 1.0 l/min to 2.5 l/min (37-mm cassette).

Sample Volume: Adjust to obtain 100 to 1,300 fibers/mm ².

Shipment: Routine.

Sample Stability: Indefinite.

Blanks: 10% of samples (minimum 2).

Standard Analytical Error: 0.25.

Applicability: The working range is 0.02 f/cc (1920–L air sample) to 1.25 f/cc (400–L sample). The method gives an index of airborne asbestos fibers but may be used for other materials such as fibrous glass by inserting suitable parameters into the counting rules. The method does not differentiate between asbestos and other fibers. Asbestos fibers less than ca. 0.25 μm diameter will not be detected by this method.

Interferences: Any other airborne fiber may interfere since all particles meeting the counting criteria are counted. Chain-like particles may appear fibrous. High levels of nonfibrous dust particles may obscure fibers in the field of view and raise the detection limit.

Reagents:

1. Acetone.

2. Triacetin (glycerol triacetate), reagent grade.

Special Precautions: Acetone is an extremely flammable liquid and precautions must be taken not to ignite it. Heating of acetone must be done in a ventilated laboratory fume hood using a flameless, spark-free heat source.

Equipment:

1. *Collection device:* 25-mm cassette with 50-mm extension cowl with cellulose ester filter, 0.8 to 1.2 mm pore size and backup pad.

Note.—Analyze representative filters for fiber background before use and discard the filter lot if more than 5 fibers/100 fields are found.

2. Personal sampling pump, greater than or equal to 0.5 l/min, with flexible connecting tubing.

3. Microscope, phase contrast, with green or blue filter, 8 to 10X eyepiece, and 40 to 45X phase objective (total magnification ca. 400X); numerical aperture = 0.65 to 0.75.

4. Slides, glass, single-frosted, pre-cleaned, 25 x 75 mm.

5. Cover slips, 25 x 25 mm, No. 1½ unless otherwise specified by microscope manufacturer.

6. Knife, #1 surgical steel, curved blade.

7. Tweezers.

8. Flask, Guth-type, insulated neck, 250 to 500 mL (with single-holed rubber stopper and elbow-jointed glass tubing, 16 to 22 cm long).

9. Hotplate, spark-free, stirring type; heating mantle; or infrared lamp and magnetic stirrer.

10. Syringe, hypodermic, with 22-gauge needle.

11. Graticule, Walton-Beckett type with 100 μm diameter circular field at the specimen plane (area = 0.00785 mm ²). (Type G–22).

Note.—The graticule is custom-made for each microscope.

12. HSE/NPL phase contrast test slide, Mark II.

13. Telescope, ocular phase-ring centering.

14. Stage micrometer (0.01 mm divisions).

Sampling

1. Calibrate each personal sampling pump with a representative sampler in line.

2. Fasten the sampler to the worker's lapel as close as possible to the worker's mouth. Remove the top cover from the end of the cowl extension (open face) and orient face down. Wrap the joint between the extender and the monitor's body with shrink tape to prevent air leaks.

3. Submit at least two blanks (or 10 percent of the total samples, whichever is greater) for each set of samples. Remove the caps from the field blank cassettes and store the caps and cassettes in a clean area (bag or box) during the sampling period. Replace the caps in the cassettes when sampling is completed.

4. Sample at 0.5 L/min or greater. Do not exceed 1 mg total dust loading on the filter. Adjust sampling flow rate, Q (L/min), and time to produce a fiber density, E (fibers/mm²), of 100 to 1,300 fibers/m² [3.85 x 10^4 to 5 x 10^5 fibers per 25-mm filter with effective collection area (A_c = 385 mm²)] for optimum counting precision (see step 21 below). Calculate the minimum sampling time, $t_{minimum}$ (min) at the action level (one-half of the current standard), L (f/cc) of the fibrous aerosol being sampled:

$$t_{min} = \frac{(A_c)(E)}{(Q)(L)10^3}$$

5. Remove the field monitor at the end of sampling, replace the plastic top cover and small end caps, and store the monitor.

6. Ship the samples in a rigid container with sufficient packing material to prevent jostling or damage.

Note.—Do not use polystyrene foam in the shipping container because of electrostatic forces which may cause fiber loss from the sampler filter.

Sample Preparation

Note.—The object is to produce samples with a smooth (nongrainy) background in a medium with a refractive index equal to or less than 1.46. The method below collapses the filter for easier focusing and produces permanent mounts which are useful for quality control and interlaboratory comparison. Other mounting techniques meeting the above criteria may also be used, e.g., the nonpermanent field mounting technique used in P & CAM 239.

7. Ensure that the glass slides and cover slips are free of dust and fibers.

8. Place 40 to 60 ml of acetone into a Guth-type flask. Stopper the flask with a single-hole rubber stopper through which a glass tube extends 5 to 8 cm into the flask. The portion of the glass tube that exits the top of the stopper (8 to 10 cm) is bent downward in an elbow that makes an angle of 20 to 30 degrees with the horizontal.

9. Place the flask in a stirring hotplate or wrap in a heating mantle. Heat the acetone gradually to its boiling temperature (ca. 58 °C).

Caution. The acetone vapor must be generated in a ventilated fume hood away from all open flames and spark sources. Alternate heating methods can be used, providing no open flame or sparks are present.

10. Mount either the whole sample filter or a wedge cut from the sample filter on a clean glass slide.

a. Cut wedges of ca. 25 percent of the filter area with a curved-blade steel surgical knife using a rocking motion to prevent tearing.

b. Place the filter or wedge, dust side up, on the slide. Static electricity will usually keep the filter on the slide until it is cleared.

c. Hold the glass slide supporting the filter approximately 1 to 2 cm from the glass tube port where the acetone vapor is escaping from the heated flask. The acetone vapor stream should cause a condensation spot on the glass slide ca. 2 to 3 cm in diameter. Move the glass slide gently in the vapor stream. The filter should clear in 2 to 5 sec. If the filter curls, distorts, or is otherwise rendered unusable, the vapor stream is probably not strong enough. Periodically wipe the outlet port with tissue to prevent liquid acetone dripping onto the filter.

d. Using the hypodermic syringe with a 22-gauge needle, place 1 to 2 drops of triacetin on the filter. Gently lower a clean 25-mm square cover slip down onto the filter at a slight angle to reduce the possibility of forming bubbles. If too many bubbles form or the amount of triacetin is insufficient, the cover slip may become detached within a few hours.

e. Glue the edges of the cover slip to the glass slide using a lacquer or nail polish.

Note.—If clearing is slow, the slide preparation may be heated on a hotplate (surface temperature 50°C) for 15 min. to hasten clearing. Counting may proceed immediately after clearing and mounting are completed.

Calibration and Quality Control

11. *Calibration of the Walton-Beckett graticule.* The diameter, d_c (mm), of the circular counting area and the disc diameter must be specified when ordering the graticule.

a. Insert any available graticule into the eyepiece and focus so that the graticule lines are sharp and clear.

b. Set the appropriate interpupillary distance and, if applicable, reset the binocular head adjustment so that the magnification remains constant.

c. Install the 40 to 45 X phase objective.

d. Place a stage micrometer on the microscope object stage and focus the microscope on the graduated lines.

e. Measure the magnified grid length, L_o (um), using the stage micrometer.

f. Remove the graticule from the microscope and measure its actual grid length, L_a (mm). This can best be accomplished by using a stage fitted with verniers.

g. Calculate the circle diameter, d_c (mm), for the Walton-Beckett graticule:

$$d_c = \frac{L_a \times D}{L_o}$$

Example: If $L_o = 108$ um, $L_n = 2.93$ mm and $D = 100$ um, then $d_c = 2.71$ mm.

h. Check the field diameter, D(acceptable range 100 mm ±2 mm) with a stage micrometer upon receipt of the graticule from the manufacturer. Determine field area (mm^2).

12. *Microscope adjustments.* Follow the manufacturer's instructions and also the following:

a. Adjust the light source for even illumination across the field of view at the condenser iris.

Note.—Kohler illumination is preferred, where available.

b. Focus on the particulate material to be examined.

c. Make sure that the field iris is in focus, centered on the sample, and open only enough to fully illuminate the field of view.

d. Use the telescope ocular supplied by the manufacturer to ensure that the phase rings (annular diaphragm and phase-shifting elements) are concentric.

13. Check the phase-shift detection limit of the microscope periodically.

a. Remove the HSE/NPL phase-contrast test slide from its shipping container and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note.—The slide consists of seven sets of grooves (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7. The requirements for counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 to 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope which fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image quality deteriorates, clean the microscope optics and, if the problem persists, consult the microscope manufacturer.

14. *Quality control of fiber counts.*

a. Prepare and count field blanks along with the field samples. Report the counts on each blank. Calculate the mean of the field blank counts and subtract this value from each sample count before reporting the results.

Note.—The identity of the blank filters should be unknown to the counter until all counts have been completed.

Note.—If a field blank yields fiber counts greater than 7 fibers/100 fields, report possible contamination of the samples.

b. Perform blind recounts by the same counter on 10 percent of filters counted (slides relabeled by a person other than the counter).

15. Use the following test to determine whether a pair of counts on the same filter should be rejected because of possible bias. This statistic estimates the counting repeatability at the 95 percent confidence level. Discard the sample if the difference between the two counts exceeds 2.77 $(F)s_r$, where F = average of the two fiber counts and s_r = relative standard deviation, which should be derived by each laboratory based on historical in-house data.

Note.—If a pair of counts is rejected as a result of this test, recount the remaining samples in the set and test the new counts against the first counts. Discard all rejected paired counts.

16. Enroll each new counter in a training course that compares performance of counters on a variety of samples using this procedure.

Note.—To ensure good reproducibility, all laboratories engaged in asbestos counting are required to participate in the Proficiency Analytical Testing (PAT) Program and should routinely participate with other asbestos fiber counting laboratories in the exchange of field samples to compare performance of counters.

Measurement

17. Place the slide on the mechanical stage of the calibrated microscope with the center of the filter under the objective lens. Focus the microscope on the plane of the filter.

18. Regularly check phase-ring alignment and Kohler illumination.

19. The following are the counting rules:

a. Count only fibers longer than 5 um. Measure the length of curved fibers along the curve.

b. Count only fibers with a length-to-width ratio equal to or greater than 3:1.

c. For fibers that cross the boundary of the graticule field, do the following:

(1) Count any fiber longer than 5 um that lies entirely within the graticule area.

(2) Count as ½ fiber any fiber with only one end lying within the graticule area.

(3) Do not count any fiber that crosses the graticule boundary more than once.

(4) Reject and do not count all other fibers.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of a fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields. Stop at 100 fields regardless of fiber count.

20. Start counting from one end of the filter and progress along a radial line to the other end, shift either up or down on the filter, and continue in the reverse direction. Select fields randomly by looking away from the eyepiece briefly while advancing the mechanical stage. When an agglomerate covers ca. ⅛ or more of the field of view, reject the field and select another. Do not report rejected fields in the number of total fields counted.

Note.—When counting a field, continuously scan a range of focal planes by moving the fine focus knob to detect very fine fibers which have become embedded in the filter. The small-diameter fibers will be very faint but are an important contribution to the total count.

Calculations

21. Calculate and report fiber density on the filter, E (fibers/mm^2); by dividing the total fiber count, F; minus the mean field blank count, B, by the number of fields, n; and the field area, A_f (0.00785 mm^2 for a properly calibrated Walton-Beckett graticule):

$$E = \frac{F - B}{(n)(A_f)} \text{ fibers/mm}^2$$

22. Calculate the concentration, C (f/cc), of fibers in the air volume sampled, V (L), using the effective collection area of the filter, A_c (385 mm^2 for a 25-mm filter):

$$C = \frac{(E)(A_c)}{V(10^3)}$$

Note.—Periodically check and adjust the value of A_c, if necessary.

Appendix C to § 763.121—Qualitative and Quantitative Fit Testing Procedures—Mandatory

Qualitative Fit Test Protocols

I. Isoamyl Acetate Protocol

A. Odor Threshold Screening. 1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25 °C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor-free water.

7. The odor test and test blank jars shall be labeled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically peeled, dried off and switched to maintain the integrity of the test.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to identify correctly the jar containing the odor test

solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator selection. 1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least five sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fitted properly and used properly, will provide adequate protection.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a good fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. All donning and adjustments of the facepieces shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points of #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g. see ANSI Z88.2–1980). Before conducting the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If it has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit test. 1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2 foot diameter frame, so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

3. After selection, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and rainbow passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of cooperation, the purpose for the head exercises, or to demonstrate some of the exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject breaks the faceseal and takes a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. At least two facepieces shall be selected for the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL of airborne asbestos. In atmospheres greater than 10 times, and less than 100 times the PEL (up to 100 ppm), the subject must pass the IAA test using a full face negative pressure respirator. (The concentration of the IAA inside the test chamber must be increased by ten times for QLFT of the full facepiece.)

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal.

(3) Significant dental changes; i.e., multiple extractions without prothesis, or acquiring dentures.

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator selection. Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste threshold screening. 1. An enclosure about head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with mouth open with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinquish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 gram of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C.7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to expand fully.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test. 1. The test subject shall don and adjust the respirator without assistance from any person.

2. The fit test uses the same enclosure described in IIB above.

3. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

4. The test subject shall don the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

5. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinquish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B.8 through B.10 above).

10. After generation of the aerosol, read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C.9.

12. The test subject shall indicate to the test conductor, if at any time during the fit test, the taste of saccharin is detected.

13. If the saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

14. At least two facepieces shall be selected by the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e., multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection. Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a combination of high-efficiency and acid-gas cartridges.

B. Fit test. 1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular.*

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. At least two facepieces shall be selected by the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

13. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of asbestos.

14. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

15. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

16. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

17. Qualitative fit testing shall be repeated at least every six months.

18. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

Quantitative Fit Test Procedures

1. General

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign one individual who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. Definitions

a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus

a. *Instrumentation.* Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. *Test chamber.* The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particular filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is

not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible. The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. Procedural Requirements

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfo II-M, Norton M, Survivair M, A–O M, or Scott–M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive pressure test.* With the exhaust port(s) blocked, the negative pressure of slight inhalation should remain constant for several seconds.

(2) *Negative pressure test.* With the intake port(s) blocked, the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d. and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. *Exercise Regime.*

Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his/her head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

d. *Moving head up and down (UD).* Standing in place, the subject shall slowly move his/her head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

e. *Reading (R).* The subject shall read out slowly and loudly so as to be heard clearly by the test conductor or monitor. The test subject shall read the "rainbow passage" at the end of this section.

f. *Grimace (G).* The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least 30 seconds.

h. *Jogging in place (J).* The test subject shall perform jog in place for at least 30 seconds.

i. *Normal Breathing (NB).* Same as exercise a.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. Termination of Test

The test shall be terminated whenever any single peak penetration exceeds 5 percent for halfmasks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h.).

7. Calculation of Fit Factors

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. Interpretation of Test Results

The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. Other Requirements

a. The test subject shall not be permitted to wear a halfmask or full facepiece mask if the minimum fit factor of 100 or 1,000, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the test subject with the following information:

(1) Name.

(2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. Retesting

In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

a. Weight change of 20 pounds or more,

b. Significant facial scarring in the area of the facepiece seal,

c. Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,

d. Reconstructive or cosmetic surgery, or

e. Any other condition that may interfere with facepiece sealing.

11. Recordkeeping

A summary of all test results shall be maintained for 3 years. The summary shall include:

a. Name of test subject.

b. Date of testing.

c. Name of the test conductor.

d. Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

Appendix D to § 763.121—Medical Questionnaires—Mandatory

This mandatory appendix contains the medical questionnaires that must be administered to all employees who are exposed to asbestos above the action level, and who will therefore be included in their employer's medical surveillance program. Part 1 of the appendix contains the Initial Medical Questionnaire, which must be obtained for all new hires who will be covered by the medical surveillance requirements. Part 2 includes the abbreviated Periodical Medical Questionnaire, which must be administered to all employees who are provided periodic medical examinations under the medical surveillance provisions of the standard.

BILLING CODE 6560-50-M

Part 1
INITIAL MEDICAL QUESTIONNAIRE

1. NAME _____

2. SOCIAL SECURITY # ___ ___ ___ ___ ___ ___ ___ ___ ___
(1 2 3 4 5 6 7 8 9)

3. CLOCK NUMBER ___ ___ ___ ___ ___ ___
(10 11 12 13 14 15)

4. PRESENT OCCUPATION _____

5. PLANT _____

6. ADDRESS _____

7. _____
(Zip Code)

8. TELEPHONE NUMBER _____

9. INTERVIEWER _____

10. DATE _____ ___ ___ ___ ___ ___ ___
(16 17 18 19 20 21)

11. Date of Birth _____ ___ ___ ___ ___ ___ ___
Month Day Year (22 23 24 25 26 27)

12. Place of Birth _____

13. Sex
1. Male ___
2. Female ___

14. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/ Divorced ___

15. Race
1. White ___
2. Black ___
3. Asian ___
4. Hispanic ___
5. Indian ___
6. Other ___

16. What is the highest grade completed in school? _____
(For example 12 years is completion of high school)

OCCUPATIONAL HISTORY

17A. Have you ever worked full time (30 hours per week or more) for 6 months or more?
1. Yes ___ 2. No ___

IF YES TO 17A:

B. Have you ever worked for a year or more in any dusty job?
1. Yes ___ 2. No ___
3. Does Not Apply ___

Specify job/industry _____ Total Years Worked ___

Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

C. Have you even been exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___
Specify job/industry _____ Total Years Worked ___

Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

D. What has been your usual occupation or job--the one you have worked at the longest?

1. Job occupation _____

2. Number of years employed in this occupation _____

3. Position/job title _____

4. Business, field or industry _____

(Record on lines the years in which you have worked in any of these industries, e.g., 1960-1969).
Have you ever worked:

	YES	NO
E. In a mine?.....	☐	☐
F. In a quarry?.....	☐	☐
G. In a foundry?.....	☐	☐
H. In a pottery?.....	☐	☐
I. In a cotton, flax or hemp mill?.....	☐	☐
J. With asbestos, tremolite, anthophyllite, or actinolite?.....	☐	☐

18. PAST MEDICAL HISTORY

	YES	NO
A. Do you consider yourself to be in good health?	☐	☐

If "NO" state reason _____

B. Have you any defect of vision?..... |__| |__|

If "YES" state nature of defect _____

C. Have you any hearing defect?..... |__| |__|

If "YES" state nature of defect _____

D. Are you suffering from or have you ever suffered from:

a. Epilepsy (or fits, seizures, convulsions)? |__| |__|

b. Rheumatic fever? |__| |__|

c. Kidney disease? |__| |__|

d. Bladder disease? |__| |__|

e. Diabetes? |__| |__|

f. Jaundice? |__| |__|

19. CHEST COLDS AND CHEST ILLNESSES

19A. If you get a cold, does it usually go to your chest? (Usually means more then 1/2 the time) 1. Yes __ 2. No __ 3. Don't get colds __

20A. During the past 3 years, have you had any chest illnesses that have kept you off work, indoors at home, or in bed? 1. Yes __ 2. No __

IF YES TO 20A:

B. Did you produce phlegm with any of these chest illness? 1. Yes __ 2. No __ 3. Does not apply __

C. In the last 3 years, how many illnesses with (increased) phlegm did you have which lasted a week or more? Number of illnesses __ No such illnesses __

21. Did you have any lung trouble before the age of 16? 1. Yes __ 2. No __

22. Have you ever had any of the following?

1A. Attacks of bronchitis? 1. Yes __ 2. No __

IF YES TO 1A:

B. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does not apply __

C. At what age was your first attack? Age in Years __ Does not apply __

2A. Pneumonia (including bronchopneumonia)? 1. Yes __ 2. No __

IF YES TO 2A:

B. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

C. At what age did you first have it? Age in Years __ Does Not Apply __

3A. Hay Fever? 1. Yes __ 2. No __

IF YES TO 3A:

B. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

C. At what age did it start? Age in Years __ Does Not Apply __

23A. Have you ever had chronic bronchitis? 1. Yes __ 2. No __

IF YES TO 23A:

B. Do you still have it? 1. Yes __ 2. No __ 3. Does Not Apply __

C. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

D. At what age did it start? Age in Years __ Does Not Apply __

24A. Have you ever had emphysema? 1. Yes __ 2. No __

IF YES TO 24A:

B. Do you still have it? 1. Yes __ 2. No __ 3. Does Not Apply __

C. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

D. At what age did it start? Age in Years __ Does Not Apply __

25A. Have you ever had asthma? 1. Yes __ 2. No __

IF YES TO 25A:

B. Do you still have it? 1. Yes __ 2. No __ 3. Does Not Apply __

C. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

D. At what age did it start? Age in Years __ Does Not Apply __

E. If you no longer have it, at what age did it stop? Age Stopped ___ Does Not Apply ___

26. Have you ever had:

A. Any other chest illness? 1. Yes ___ 2. No ___
If yes, please specify _____

B. Any chest operations? 1. Yes ___ 2. No ___
If yes, please specify _____

C. Any chest injuries? 1. Yes ___ 2. No ___
If yes, please specify _____

27A. Has a doctor ever told you that you had heart trouble? 1. Yes ___ 2. No ___

IF YES TO 27A:

B. Have you ever had treatment for heart trouble in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

28A. Has a doctor ever told you that you had high blood pressure? 1. Yes ___ 2. No ___

IF YES TO 28A:

B. Have you had any treatment for high blood pressure (hypertension) in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

29. When did you last have your chest X-rayed? (Year) ___ ___ ___ ___
25 26 27 28

30. Where did you last have your chest X-rayed (if known) _____

What was the outcome? _____

FAMILY HISTORY

31. Were either of your natural parents ever told by a doctor that they had a chronic lung conditions such as:

	Father			Mother		
	1. Yes	2. No	3. Don't Know	1. Yes	2. No	3. Don't Know
A. Chronic Bronchitis?	___	___	___	___	___	___
B. Emphysema?	___	___	___	___	___	___
C. Asthma?	___	___	___	___	___	___

		Father			Mother		
		1. Yes	2. No	3. Don't Know	1. Yes	2. No	3. Don't Know
D.	Lung cancer?	___	___	___	___	___	___
E.	Other chest conditions	___	___	___	___	___	___
F.	Is parent currently alive?	___	___	___	___	___	___
G.	Please Specify	___ Age if Living ___ Age at Death ___ Don't Know			___ Age if Living ___ Age at Death ___ Don't Know		
H.	Please specify cause of death	_____			_____		

COUGH

32A. Do you usually have a cough? (Count a cough with first smoke or on first going out of doors. Exclude clearing of throat.) [If no, skip to question 32C.] 1. Yes ___ 2. No ___

B. Do you usually cough as much as 4 to 6 times a day 4 or more days out of the week? 1. Yes ___ 2. No ___

C. Do you usually cough at all on getting up or first thing in the morning? 1. Yes ___ 2. No ___

D. Do you usually cough at all during the rest of the day or at night? 1. Yes ___ 2. No ___

IF YES TO ANY OF ABOVE (32A, B, C, OR D), ANSWER THE FOLLOWING. IF NO TO ALL, CHECK DOES NOT APPLY AND SKIP TO NEXT PAGE

E. Do you usually cough like this on most days for 3 consecutive months or more during the year? 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had the cough? Number of Years ___ Does not apply ___

33A. Do you usually bring up phlegm from your chest? (Count phlegm with the first smoke or on first going out of doors. Exclude phlegm from the nose. Count swallowed phlegm.) (If no, skip to 33C) 1. Yes ___ 2. No ___

B. Do you usually bring up phlegm like this as much as twice a day 4 or more days out of the week? 1. Yes ___ 2. No ___

C. Do you usually bring up phlegm at all on getting up or first thing in the morning? 1. Yes ___ 2. No ___

D. Do you usually bring up phlegm at all during the rest of the day or at night? 1. Yes __ 2. No __

IF YES TO ANY OF THE ABOVE (33A, B, C, OR D), ANSWER THE FOLLOWING:
IF NO TO ALL, CHECK DOES NOT APPLY AND SKIP TO 34A.

E. Do you bring up phlegm like this on most days for 3 consecutive months or more during the year? 1. Yes __ 2. No __ 3. Does not apply __

F. For how many years have you had trouble with phlegm? Number of years __ Does not apply __

EPISODES OF COUGH AND PHLEGM

34A. Have you had periods of episodes of (increased*) cough and phlegm lasting for 3 weeks or more each year? *(For persons who usually have cough and/or phlegm) 1. Yes __ 2. No __

If YES to 34A

B. For how long have you had at least 1 such episode per year? Number of years __ Does not apply __

WHEEZING

35A. Does your chest ever sound wheezy or whistling

1. When you have a cold? 1. Yes __ 2. No __
2. Occasionally apart from colds? 1. Yes __ 2. No __
3. Most days or nights? 1. Yes __ 2. No __

IF YES TO 1, 2, OR 3 IN 35A

B. For how many years has this been present? Number of years __ Does not apply __

36A. Have you ever had an attack of wheezing that has made you feel short of breath? 1. Yes __ 2. No __

IF YES TO 36A

B. How old were you when you had your first such attack? Age in years __ Does not apply __

C. Have you had 2 or more such episodes? 1. Yes __ 2. No __ 3. Does not apply __

D. Have you ever required medicine or treatment for the(se) attack(s)? 1. Yes __ 2. No __ 3. Does not apply __

BREATHLESSNESS

37. If disabled from walking by any condition other than heart or lung disease, please describe and proceed to question 39A.
Nature of condition(s) _____

38A. Are you troubled by shortness of breath when hurrying on the level or walking up a slight hill? 1. Yes __ 2. No __

IF YES TO 38 A

B. Do you have to walk slower than people of your age on the level because of breathlessness? 1. Yes __ 2. No __ 3. Does not apply __

C. Do you ever have to step for breath when walking at your own pace on the level? 1. Yes __ 2. No __ 3. Does not apply __

D. Do you ever have to stop for breath after walking about 100 yards (or after a few minutes) on the level? 1. Yes __ 2. No __ 3. Does not apply __

E. Are you too breathless to leave the house or breathless on dressing or climbing one flight of stairs? 1. Yes __ 2. No __ 3. Does not apply __

TOBACCO SMOKING

39A. Have you ever smoked cigarettes? (No means less than 20 packs of cigarettes or 12 oz. of tobacco in a lifetime or less than 1 cigarette a day for 1 year). 1. Yes __ 2. No __

IF YES TO 39A

B. Do you now smoke cigarettes (as of one months ago) 1. Yes __ 2. No __ 3. Does not apply __

C. How old were you when you first started regular cigarette smoking? Age in years __ Does not apply __

D. If you have stopped smoking cigarettes completely, how old were you when you stopped? Age stopped __ Check if still smoking __ Does not apply __

E. How many cigarettes do you smoke per day now? Cigarettes per day __ Does not apply __

F. On the average of the entire time you smoked, how many cigarettes did you smoke per day? Cigarettes per day __ Does not apply __

G. Do or did you inhale the cigarette smoke?

1. Does not apply ___
2. Not at all ___
3. Slightly ___
4. Moderately ___
5. Deeply ___

40A. Have you ever smoked a pipe regularly? (Yes means more than 12 oz. of tobacco in a lifetime.)

1. Yes ___ 2. No ___

IF YES TO 40A:

FOR PERSONS WHO HAVE EVER SMOKED A PIPE

B. 1. How old were you when you started to smoke a pipe regularly?

Age ___

2. If you have stopped smoking a pipe completely, how old were you when you stopped?

Age stopped ___ ___
Check if still smoking a pipe ___
Does not apply ___ ___

C. On the average over the entire time you smoked a pipe, how much pipe tobacco did you smoke per week?

___ oz. per week (a standard pouch of tobacco contains 1 1/2 oz.)
___ Does not apply

D. How much pipe tobacco are you smoking now?

oz. per week ___
Not currently smoking a pipe

E. Do you or did you inhale the pipe smoke?

1. Never smoked
2. Not at all ___
3. Slightly ___
4. Moderately ___
5. Deeply ___

41A. Have you ever smoked cigars regularly? (Yes means more than 1 cigar a week for a year)

1. Yes ___ 2. No ___

IF YES TO 41A

FOR PERSONS WHO HAVE EVER SMOKED CIGARS

B. 1. How old were you when you started smoking cigars regularly?

Age ___

2. If you have stopped smoking cigars completely, how old were you when you stopped?

Age stopped
Check if still smoking cigars ___
Does not apply ___

C. On the average over the entire time you smoked cigars, how many cigars did you smoke per week?

Cigars per week ___
Does not apply ___

D.	How many cigars are you smoking per week now?	Cigars per week ___ Check if not smoking cigars currently ___
E.	Do or did you inhale the cigar smoke?	1. Never smoked ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___

Signature _____ Date _____

Part 2
PERIODIC MEDICAL QUESTIONNAIRE

1. NAME _____

2. SOCIAL SECURITY # ___ ___ ___ ___ ___ ___ ___ ___ ___ ___
1 2 3 4 5 6 7 8 9

3. CLOCK NUMBER ___ ___ ___ ___ ___ ___ ___
10 11 12 13 14 15

4. PRESENT OCCUPATION _____

5. PLANT _____

6. ADDRESS _____

7. _____
(Zip Code)

8. TELEPHONE NUMBER _____

9. INTERVIEWER _____

10. DATE _____ ___ ___ ___ ___ ___ ___ ___
16 17 18 19 20 21

11. What is your marital status? 1. Single ___ 2. Married ___ 3. Widowed ___ 4. Separated/Divorced ___

12. OCCUPATIONAL HISTORY

12A. In the past year, did you work full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

12B. IF YES TO 12A:

In the past year, did you work in a dusty job? 1. Yes ___ 2. No ___ 3. Does not apply ___

12C. Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

12D. In the past year, were you exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

12E. Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

12F. In the past year, what was your: 1. Job/occupation? _____ 2. Position/job title? _____

13. RECENT MEDICAL HISTORY

13A. Do you consider yourself to be in good health? Yes ____ No ____

If NO, state reason _____

13B. In the past year, have you developed:

	Yes	No
Epilepsy?	___	___
Rheumatic fever?	___	___
Kidney disease?	___	___
Bladder disease?	___	___
Diabetes?	___	___
Jaundice?	___	___
Cancer?	___	___

14. CHEST COLDS AND CHEST ILLNESSES

14A. If you get a cold, does it usually go to your chest? (Usually means more than 1/2 the time)

1. Yes ___ No ___
3. Don't get colds ___

15A. During the past year, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?

1. Yes ___ 2. No ___
3. Does not apply ___

IF YES TO 15A:

15B. Did you produce phlegm with any of these chest illnesses

1. Yes ___ 2. No ___
3. Does not apply ___

15C. In the past year, how many such illnesses with (increased) phlegm did you have which lasted a week or more?

Number of illnesses ___
No such illnesses ___

16. RESPIRATORY SYSTEM

In the past year have you had:

	Yes or No	Further Comment on Positive Answers
Asthma	_____	
Bronchitis	_____	
Hay Fever	_____	
Other Allergies	_____	

	Yes or No	Further Comment on Positive Answers
Pneumonia	_____	
Tuberculosis	_____	
Chest Surgery	_____	
Other Lung Problems	_____	
Heart Disease	_____	
Do you have:		
Frequent colds	_____	
Chronic cough	_____	
Shortness of breath when walking or climbing one flight of stairs	_____	
Do you:		
Wheeze	_____	
Cough up phlegm	_____	
Smoke cigarettes	_____	Packs per day __ How many years __

Date _____ Signature _____

BILLING CODE 6560-50-C

Appendix E to § 763.121—Interpretation and Classification of Chest Roentgenograms—Mandatory

(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on a Roentgenographic Interpretation Form. Form CSD/NIOSH (M) 2.8.

(b) Roentgenograms shall be interpreted and classified only by a B-reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) All interpreters, whenever interpreting chest roentgenograms made under this section, shall have immediately available for reference a complete set of the ILO–U/C International Classification of Radiographs for Pneumoconioses, 1980.

§ 763.122 Exclusions for States.

(a) The States of Idaho, Kansas, Oklahoma, and Wisconsin have 6 months or such other reasonable time as suggested by the particular State and approved by the Director of the Office of Toxic Substances to make their regulations comparable to or more stringent than this part, and to submit their regulations to EPA's Office of Toxic Substances for review. If in such reasonable time after March 27, 1987, any of these States have not so revised their regulations and submitted them to EPA, State and local government employees in such States shall be covered by the requirements of this part.

(b) Any other State that wishes to be excluded from this rule shall send a copy of a regulation which it considers to be comparable to or more stringent than this part to EPA's Office of Toxic Substances for review. EPA will review the regulation and tentatively determine whether the regulation is comparable to or more stringent than this part. If EPA makes a positive tentative determination, EPA will propose an amendment to this rule excluding that State from coverage. Interested persons may comment on the proposed exclusion during the period for public comment. After considering any comments, EPA may promulgate the final amendment to the rule.

§ 763.124 Reporting.

(a) Employers subject to this rule must report to the Regional Asbestos Coordinator for the EPA Region in which the asbestos abatement project is located at least 10 days before they begin any asbestos abatement project, except one that involves less than either 3 linear feet or 3 square feet of friable asbestos material, and an emergency project. Employers must report any emergency project covered by this rule as soon as possible but in no case more than 48 hours after the project begins. A list of the EPA Regional Offices is given under § 1.7(b) of this chapter.

(b) The report must include:

(1) The employer's name and address.

(2) The location, including street address, of the asbestos abatement project.

(3) The scheduled starting and completion dates for the asbestos abatement project.

(c) If a report is mailed to EPA, the report must be postmarked at least 10 days before the asbestos abatement project begins unless the report is for an emergency project. In such a case, the report must be postmarked as soon as possible but in no case more than 48 hours after the project begins.

(d) Employers do not have to report under this section if they submit a notice to EPA under the National Emission Standard for Asbestos, § 61.146 of this chapter, at least 10 days before they begin the asbestos abatement project and that notice clearly indicates that employees covered by this rule will perform some or all of the asbestos abatement work.

(Approved by the Office of Management and Budget under control number 2070–0072)

§ 763.125 Enforcement.

(a) Failure to comply with any provision of this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin an asbestos abatement project in violation of this part, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.126 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this part.

[FR Doc. 87–3645 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
February 25, 1987

Part III

Department of Agriculture

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program for FY 1987; Solicitation of Graduate Fellowships Grants Proposals From Colleges and Universities; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program for FY 1987; Solicitation of Graduate Fellowships Grants Proposals From Colleges and Universities

Purpose: Notice is hereby given that under the authority contained in section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)), the Cooperative State Research Service (CSRS) through its Higher Education Programs (HEP) will award competitive grants to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences.

Available funds: The total amount available for this purpose in Fiscal Year 1987 is approximately $2,800,000.

Targeted areas: Food and agricultural sciences areas appropriate for fellowship applications are those in which developing shortages of expertise have been determined and targeted by CSRS–HEP for national needs fellowship support. The targeted national needs areas for FY 1987 are: Biotechnology and Food Science and/or Human Nutrition. Doctoral fellowships will be supported only in these two national needs areas. Approximately two-thirds of the fellowships will be awarded in the area of Biotechnology and one-third of the fellowships will be awarded in the area of Food Science and/or Human Nutrition.

Proposal limitations: For the Fiscal Year 1987 program, a proposal may request funding in only one (1) national need area. A proposal may request a minimum of two (2) fellowships and a maximum of four (4) fellowships in the national need area for which funding is requested. While no limitation is placed on the number of proposals an institution may submit, not more than two (2) proposals may be submitted by the same college or equivalent administrative unit within an institution. Additionally, total funds awarded to an institution under the program in Fiscal Year 1987 shall not exceed $288,000.

Financial and other limitations: Each institution funded will receive $48,000 for each doctoral fellowship awarded. These monies must be used to: (1) Support the same doctoral fellow for three (3) years at $15,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1,000, not to exceed a total of $3,000 over the three year duration of the fellowship.

Application information: An Application Kit has been developed which provides the forms, instructions, and other relevant information needed by institutions to apply for the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program described herein. To obtain a copy of the Application Kit, write or call the Grants Administrative Management office (address and telephone number below): USDA-CSRS, Office of Grants and Programs Systems, Grants Administrative Management, Room 005 Justin Smith Morrill Building, 15th and Independence Ave., SW., Washington, DC 20251–2200, Telephone: (202) 475–5049.

Six (6) copies of a proposal and one (1) copy of the institution's latest graduate catalong should be submitted to the Grants Administrative Management office at the preceding address no later than the close of business April 27, 1987. The grants will be awarded and administered in accordance with the regulations set forth in Title 7, Chapter XXXIV, Part 3402 published in the **Federal Register** February 13, 1987, 52 FR 4712. Additional regulations regarding this assistance program may be found in the Department of Agriculture Uniform Federal Assistance Regulations (7 CFR Part 3015).

Supplementary Information: This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.210. For the reasons set forth in the Final Rule related notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0024.

Done at Washington, DC, this 19th day of February 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87–3890 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–22–M

federal register

Wednesday
February 25, 1987

Part IV

Environmental Protection Agency

Amendment to Notice of Intent To Cancel Registrations and Denial of Applications for Registration of Products Containing Diazinon; Notice

ENVIRONMENTAL PROTECTON AGENCY

[OPP-30000/47C FRL]

Amendment to Notice of Intent To Cancel Registrations and Denial of Applications for Registration of Products Containing Diazinon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to Notice of Final Determination and Intent to Cancel.

SUMMARY: This Notice amends the Notice of Final Determination and Intent to Cancel Pesticide Products Containing Diazinon (51 FR 35034; October 1, 1986) to more clearly define the scope of that Notice by describing with more particularity the registrations which are subject to its terms. This Notice also allows affected registrants, applicants, and other adversely affected parties subject to the Notice another 30 days to respond before the affected products will be deemed canceled.

DATES: A request for a hearing by a registrant or applicant must be received by March 27, 1987 or 30 days from receipt by mail of this Notice, whichever is later. A request for a hearing from any other adversely affected persons must be received by March 27, 1987.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Ingrid Sunzenauer, Special Review Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1010, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–7416.

SUPPLEMENTARY INFORMATION: This Notice is organized into three parts. Unit I is the introduction. It provides the background information concerning this Amendment to the Notice of Intent to Cancel. Unit II sets forth the language being added to the definitions section of the original Notice. Unit III describes the procedure for responding to this Notice.

I. Background

On January 6, 1986, EPA initiated a Special Review of all pesticide products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms. On the same date EPA also issued the Preliminary Determination proposing to cancel registrations and deny applications for use of diazinon products on these two sites. The initiation of the Special Review and the proposed cancellation action were based on the Agency's determination that the use of diazinon on golf courses and sod farms would result in unreasonable adverse effects on non-target birds. A **Federal Register** notice was published concerning these actions on January 15, 1986 (51 FR 1842).

After conducting the Special Review, EPA announced its final decision to cancel registrations and deny applications of all pesticide products containing diazinon that are registered for use on golf courses and sod farms. The Notice of Intent to Cancel announcing this decision was sent to all registrants and was published on October 1, 1986 (51 FR 35034). EPA subsequently amended the provision of that Notice concerning the disposition of existing stocks of pesticides subject to the Notice in a **Federal Register** Notice published December 16, 1986 (51 FR 45039).

Under the terms of the Notice of Intent to Cancel, the registration of a pesticide product "containing diazinon which is registered for use on golf courses and sod farms" would be canceled within 30 days unless: (1) The registration was amended to prohibit such use, or (2) the registrant or other adversely affected person requested a hearing to contest the cancellation of a particular registration. *Id.* at 35045. Subsequently, the Notice of Intent to Cancel was amended to extend the existing stocks provision provided by the original Notice (51 FR 45039; December 16, 1986).

The Notice of Intent to Cancel was based upon the Agency's findings that the risk to non-target birds of continued use of diazinon on golf course and sod farm turf outweighed the benefits of use of diazinon on these sites, and therefore, that continued registration on these sites posed an unreasonable adverse effect on the environment. In evaluating the hazard, the Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, diazinon application practices, exposure, diazinon residue data, bird kills, problems associated with the reporting of bird kills, and the effect on endangered species. In evaluating the benefits, the Agency considered the biology of the insect pests, their control, the user cost impact of cancellation, the efficacy of diazinon and its major alternatives, and the hazards posed by the major alternatives to diazinon.

These findings applied to the use of any pesticide product containing diazinon on grass on either golf courses or sod farms. The Notice of Intent to Cancel, therefore, defined its scope as those products "registered for use on golf courses and sod farms." The term "registered" is broader than the term "labeled." If a label contains language which permits the use of diazinon on turf, the product is registered for use on these two sites and is subject to the Notice, even if the product's label does not specifically mention golf courses and sod farms. For example, the word "lawn" can be used to describe any closely mowed grassy land and includes both golf courses and sod farms. Thus, all diazinon products bearing directions for use outdoors on ornamental grass, lawns, turf, sod, recreational areas, or similar site designations are subject to the Diazinon Notice. Thus the term "registered for use on golf courses and sod farms" includes all products which legally can be used to treat grass on either golf courses or sod farms.

The Agency has reason to believe, however, that the language "registered for use on golf courses and sod farms" has been misinterpreted by some potentially affected registrants. Because of misinterpretation of the scope of the Notice of Intent to Cancel, certain registrants may have failed to amend their registrations, or to seek a hearing to contest the requirement to amend their registrations within 30 days of the receipt of the Notice of Intent to Cancel. Ordinarily, the registration of a product subject to a Notice of Intent to Cancel for which a hearing is not requested and for which the required amendments are not sought would be considered canceled once this time period expired. The potential misunderstanding by registrants and applicants, however, raises some doubt as to whether the Diazinon Notice of Intent to Cancel provided adequate notice to all registrants of the products subject to its terms.

In light of these doubts, as well as the serious consequences of failure to comply with the requirements of the Diazinon Notice, the Agency has concluded that it would be inequitable to presume that the Diazinon Notice provided adequate notice to all affected registrants. Therefore, the Agency in this Notice of Amendment is revising the Diazinon Notice to clarify its scope and is providing registrants, applicants, and other adversely affected parties, with 30 days in which to amend their registrations to comply or to seek a hearing to contest the requirements of the Diazinon Notice.

II. Amendment to the Notice

The definitions section of the Diazinon Notice of Intent to Cancel

(Unit V.B., 51 FR 35044; October 1, 1986) is amended to add the following additional definition:

4. "Registered for use on golf courses and sod farms" for purposes of this Notice means any pesticide product which contains diazinon in any formulation, except products sold in pressurized aerosol containers; and which is labeled for use outdoors on ornamental grass, lawns, turf, sod, recreational areas, or similar site designations which might result in use on grass. This definition does not include products whose labeling specifically prohibits the use of the product on both golf courses and sod farms. The Agency does not consider products labeled for the spot treatment of the nests or mounds of ants, fire ants, digger wasps, or other similar pests and the immediate area surrounding these nests or mounds, or products labeled for treatment of the exterior perimeter of a building within 10 feet or less of the building to be registered for use on golf courses and sod farms unless the product otherwise would fall within the definition of the term. By "spot treatment" the Agency means application to the individual nest or mound and/or the immediate area surrounding the nest or mound. By "immediate area" the Agency means within a four foot radius of the center or the mound and/or the nest. "Spot treatment" does not include application to broad expanses of grass.

III. Procedural Matters

This Notice reannounces EPA's intent to cancel the registrations of pesticide products containing diazinon in any formulation (except products sold in pressurized aerosol containers) which are labeled for use outdoors on ornamental grass, lawns, turf, sod, recreational areas or similar site designations which might result in use on grass. It also amends the Diazinon Notice of Intent to Cancel. (51 FR 35034; October 1, 1986). In issuing this amendment to the Notice of Intent to Cancel the Agency incorporates and relies upon the Notice of Intent to Cancel and all materials which support the Notice of Intent to Cancel.

This Unit explains how current registrants may apply to amend their registrations to comply with the terms and conditions discussed in Unit V of the Diazinon Notice of Intent to Cancel. Under sections 6(b) and 3(c)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA) applicants, registrants, and certain other adversely affected persons are also entitled to respond to this Notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law with regard to that application or registration.

Some registrants have already properly requested a hearing to contest the requirements of the Diazinon Notice of Intent to Cancel for specifically identified products and other registrants have already satisfied the Notice's requirements by seeking to amend their registration(s) and/or applications or have indicated in writing that certain of their diazinon products are not subject to the Notice because they are not registered for use on golf courses or sod farms. These registrants need take no further action to comply with the Diazinon Notice for those products which they have specifically identified in either a request for a hearing, label amendment submission, or written indication that their product is not subject to the Notice. This Unit explains how other registrants may take action to respond to the terms of the Diazinon Notice or how registrants may respond for specific products omitted from their early responses to the Agency and the consequences of failure to do so.

This Unit also explains how registrants, applicants, or other adversely affected persons may request a hearing on EPA's final cancellation and denial Notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Procedure for Amending the Terms and Conditions of Registration to Avoid Cancellation or Denial of Application

Registrants affected by the cancellation action set forth in the Diazinon Notice and this Notice may avoid cancellation by filing an application for an amended registration which contains the label modifications detailed in Unit V.B. of the Diazinon Notice of Intent to Cancel. Amendment applications already submitted to the Agency will be considered to be responses to this Notice as well, and will be considered to be filed in time. Unless the application has already been filed, it must be filed within 30 days of receipt of this Notice or within 30 days from the publication of this Notice in the **Federal Register**, whichever occurs later. Similarily, applicants for a registration subject to this Notice must file an amended application for registration within the applicable 30-day period, unless they have already done so, to avoid denial of their pending applications.

Applications must be submitted to: George LaRocca, Product Manager 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (703–557–2400).

B. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this Notice, Federal registrants or applicants may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice in the **Federal Register**, whichever occurs later. Some registrants and applicants have already requested a hearing concerning the Diazinon Notice of Intent to Cancel; all of those requests are also considered to be responses to this Notice and are considered to be in time. Any other person adversely affected by cancellation of a registration proposed by this Notice or an interested person with the concurrence of an applicant with an application for registration subject to this Notice may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

A registrant, or applicant, or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) for which a hearing is requested and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. Consequences of Filing a Timely and Effective Hearing Request.

If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164), as modified by the Diazinon Notice of Intent to Cancel. The hearing will be limited to the specific uses and specific product registrations or applications for which the hearing is requested. In the event of a hearing, specific registrations which are the

subject of the hearing will not be canceled and the specific applications will not be denied except pursuant to an order of the Administrator at the conclusion of the hearing.

2. Consequences of Failure to File in a Timely and Effective Manner.

If a hearing concerning the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be canceled, unless the registrant files a request for an amended registration within the statutory period provided herein. Similarly, if a hearing concerning a specific application for registration is not requested, then that application will be denied unless the application is revised to comply with the requirements of the Diazinon Notice within the permitted time.

C. Registrants Who Have Already Taken Action in Response to the Diazinon Notice of Intent to Cancel

Some registrants, and applicants, have already made a request for a hearing or made an amendment to their registration(s) or application(s) in response to the Diazinon Notice of Intent to Cancel or have submitted written indication that certain or their diazinon end-use product included on the Agency's list of diazinon products are not registered for golf courses or sod farms and are thus not subject to the notice. A proper response to the Notice of Intent to Cancel remains effective, and no further action is necessary from such persons to respond to this Notice. However, those registrants or applicants who failed to make a proper and complete response to the initial Notice must now make such a response or their registration(s) subject to this Notice will be considered canceled or their applicaton(s) denied in 30 days.

Dated: February 19, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–3937 Filed 2–24–87; 8:45 am]

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federal register

Wednesday
February 25, 1987

Part V

Department of the Treasury
Securities and Exchange Commission
Federal Reserve System

17 CFR Ch. IV

Government Securities Act of 1986; Implementing Regulations; Proposed Rule

17 CFR Parts 240 and 249

Government Securities Act of 1986; Proposed Rule and Proposed Revision of Form BD

Financial Institutions Acting as Government Securities Brokers or Government Securities Dealers; Notice

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary (Domestic Finance)

17 CFR Ch. IV

Government Securities Act of 1986; Implementing Regulations

AGENCY: Office of the Assistant Secretary (Domestic Finance), Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury is issuing proposed regulations as required by the Government Securities Act of 1986 (the "Government Securities Act" or "GSA"). The GSA requires the Secretary of the Treasury (the "Secretary") to adopt rules and regulations concerning the financial responsibility, protection of investor securities and funds, recordkeeping, reporting and audit of brokers and dealers in government securities. The GSA also requires the Secretary to adopt regulations relating to the custody of government securities held by financial institutions that are not government securities brokers or dealers. The proposed regulations are designed to enhance the protection of investors in government securities while maintaining a fair, honest and liquid market in such securities. Subchapter A of the proposed regulations covers government securities brokers and dealers. Subchapter B of the proposed regulations deals with custody of government securities by financial institutions.

DATES: Comments must be submitted on or before March 27, 1987. No extensions of time for comment will be provided.

ADDRESSES: Send comments to: The Government Securities Regulations Project, Department of the Treasury, Room 4417, Main Treasury Building, Washington, DC 20220.

Copies of all written comments will be available for public inspection and copying from 9:00 A.M. to 5:30 P.M. at the Treasury Department Library, Room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Ellen Seidman (Special Assistant to the Under Secretary), Room 4414, Main Treasury Building, Washington, DC 20220, (202) 566–2278.

For information concerning financial responsibility (capital) and Form G 405, contact: Norman Carleton (Assistant Director, Office of Government Finance & Market Analysis), Room 3044, Main Treasury Building, Washington, D.C. 20220, (202) 566–2330.

For information concerning possession or control of securities, contact: Virginia Rutledge (Senior Attorney for Finance), Room 2025, Main Treasury Building, Washington, DC 20220, (202) 535–4890.

SUPPLEMENTARY INFORMATION:

I. Background

The GSA establishes, for the first time, a federal system for regulation of brokers and dealers who transact business exclusively in government securities, or a government securities business combined with business in exempted securities and/or futures and other commodity interests regulated by the Commodity Futures Trading Commission ("CFTC"). The Secretary of the Treasury is to adopt rules and regulations concerning the financial responsibility, protection of investor securities and balances, recordkeeping, reporting and audit of government securities brokers and dealers.[1] Previously unregulated government securities brokers and dealers must also register with the Securities and Exchange Commission (the "SEC" or "Commission") and join a self-regulatory organization.[2] Enforcement of the Secretary's regulations will be carried out by the SEC and the appropriate self-regulatory organizations.[3] The GSA also provides for regulation of all other brokers and dealers in government securities, all of whom must notify their principal regulatory agency of their status as government securities brokers or dealers.[4] Enforcement of the regulations for such entities will be carried out by the appropriate regulatory agencies.[5]

The purpose of such registration and regulation is to enhance the protection of investors in government securities by establishing and enforcing appropriate financial responsibility and custodial standards for government securities brokers and dealers. At the same time, the standards must respect and protect the integrity, liquidity and efficiency of the world's largest securities market, which is vital to the effective implementation of fiscal and monetary policy in the United States.[6]

In adopting regulations concerning those entities that are already regulated, such as brokers and dealers registered under sections 15 or 15B of the Securities Exchange Act of 1934 (the "Act") and financial institutions, the Secretary of the Treasury is to take into consideration already existing regulation with a view toward preventing overly burdensome or duplicative regulation.[7]

The proposed regulations constitute the Secretary's response to these mandates. The GSA requires that the regulations become effective as temporary regulations on May 26, 1987, and as final regulations on July 25, 1987. All government securities brokers and dealers must register or give notice by July 25, 1987, and must be in compliance with the regulations that will become final on that date.[8] Because of the short timetable both for developing the regulations and meeting their requirements, no extensions of time for comment will be granted and it is extremely important that all those potentially affected by the regulations

[1] Section 15C(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–5(b)]. All citations to the Securities Exchange Act (hereinafter the "Act") will refer to the section of the Act followed by the parallel citation to the United States Code in brackets. Title I of the GSA, which provides for regulation of government securities brokers and dealers, amends the Act, in part by adding Section 15C.

[2] Section 15C(a)(1)(A), (e) [15 U.S.C. 78o–5(a)(1)(A), (e)]. Currently unregulated entities that believe they are government securities brokers or dealers are urged to contact the appropriate self-regulatory organization, in most cases the National Association of Securities Dealers ("NASD"), for membership information, as soon as possible. The NASD has informed the Department that it will only be able to guarantee completion of membership processing before the July 25, 1987 deadline for entities that submit complete applications prior to April 15, 1987.

[3] Sections 15C(c)(1), 19(g)(1) [15 U.S.C. 78o–5(c)(1), 78s]. The Act also contains criminal penalties enforced by the Department of Justice. Section 32 [15 U.S.C. 78ff].

[4] Section 15C(a)(1)(B), (b) [15 U.S.C. 78o–5(a)(1)(B), (b)].

[5] Generally, the appropriate regulatory agency, for a financial institution is that institution's federal supervisory agency and is the SEC for all others, including brokers and dealers registered with the SEC under sections 15 or 15B of the Act. Section 3(a)(34)(G) [15 U.S.C. 78c(a)(34)(G)].

[6] Government Securities Act of 1986, Pub. L. 99–571, Section 1, 100 Stat. 3208 (1986) (hereinafter cited as *GSA*).

[7] Section 15C(b)(3)(C) [15 U.S.C. 78o–5(b)(3)(C)]; 132 Cong. Rec. H9251 (Oct. 6, 1986).

[8] GSA, supra note 6, section 402. In general, the regulations are proposed to be effective July 25, 1987. However, because of the difficulties of achieving compliance with several of the regulations in the maximum of 15 days that will be available between the date for publication of the temporary regulations and June 10, 1987, the date on which entities must file registration applications with the SEC in order to assure registration before July 25, several of the regulations, in particular Part 402 relating to financial responsibility, will not become fully effective until October 25, 1987.

Previously unregulated government securities brokers and dealers are reminded that, in addition to the regulations to be promulgated under the GSA, they are subject to the provisions of sections 10(b), 15(c)(1), 17(f)(1) and 17(f)(2) of the Act and the regulations promulgated by the SEC thereunder.

take the opportunity provided by this publication to analyze and comment upon the proposals, and also to prepare for implementation.[9]

In developing the proposed regulations, the Treasury has consulted extensively with the SEC and the federal supervisory agencies for financial institutions, and with the Federal Reserve Bank of New York ("FRBNY"), which has developed and published a voluntary capital adequacy guideline for brokers and dealers in government securities. The Department has met with twenty-three brokers or dealers in government securities, regulated and unregulated, large and small, financial institutions and others, and talked with a number of additional brokers and dealers by telephone. We have met with the relevant self-regulatory organizations, the National Association of Securities Dealers and the New York Stock Exchange. We have also met with trade associations, professional organizations (such as the American Institute of Certified Public Accountants), and with individual professionals serving government securities brokers and dealers. We have also been in touch with representatives of investors, including governmental entities and savings and loan associations. We have received written comments and suggestions from some of those with whom we met and from others.

As a result of this consultation and the Department's analysis, the Department has reached several conclusions concerning the Commission's existing regulations under sections 15 and 17 of the Act. First, the Department believes that in large part the existing SEC regulations that correspond to the statutory mandate of the Secretary work effectively to protect customers and insure financial integrity of brokers and dealers. In addition, almost all of the entities other than financial institutions that will be affected by the proposed regulations are familiar with many of the appropriate regulations under sections 15 and 17, either by virtue of their affiliation with a registered broker or dealer or a registered municipal securities dealer or because the principals in the firm or professionals who service them are familiar with these regulations. Furthermore, many of these entities currently are in compliance with the SEC's regulations. Finally, with a few exceptions, the Department has concluded that regulations currently applicable to financial institutions that are government securities brokers and dealers also effectively meet the purposes of the GSA.

As a result of these conclusions, the proposed regulations, in all areas except financial responsibility, largely adopt existing regulations under sections 15 and 17 of the Act by reference, with limited modifications. Compliance by registered brokers or dealers with rules under sections 15 and 17 will, in general, be deemed compliance with these rules. With limited modifications, compliance by government securities brokers and dealers that are financial institutions with existing regulations will also be deemed compliance with these regulations. In this way, the Department intends to enable newly registered entities to rely on SEC interpretations of the rules, which are in general well-known to the industry and essential to effective enforcement of the rules. The Department is working with the other regulatory agencies to encourage them to adopt the modifications proposed in these regulations so that in time there will be only one applicable set of regulations for each entity.

In the area of financial responsibility, however, the Department determined that the capital adequacy model designed by the FRBNY,[10] which effectively recognizes certain types of risks as well as risk-mitigating hedging techniques is, with modifications, better suited for brokers and dealers solely in government securities, other exempted securities, and CFTC-regulated commodity interests than SEC Rule 15c3–1.[11] The Department is working with the SEC toward development of a uniform rule that would allow the Treasury to accept compliance with Rule 15c3–1 by presently unregulated government securities brokers and dealers as compliance with the Treasury rule.

Regulations relating to CFTC-regulated entities. The Act requires that the SEC, in consultation with the CFTC, determine what government securities activities of a CFTC-registered entity are "incidental" to the futures business. A CFTC-registered entity conducting only "incidental" government securities activities will not be considered a government securities broker or dealer.[12] Entities whose activities go beyond the "incidental" are required to register with the SEC and to become a member of a self-regulatory organization as defined in the Act. The SEC is scheduled to publish soon a proposed regulation defining the term "incidental" with respect to CFTC-registered entities. Based on the information available to it, the Department believes that the SEC regulation effectively removes from regulation as government securities brokers or dealers a very large number of futures commission merchants ("FCM's") and other CFTC-registered entities who limit their activities in the cash government securities market to those that are incidental to their futures-related business.

During the development period for these proposed regulations, the Department received a number of informal requests to exercise its exemptive authority to exempt FCM's and other CFTC-registered entities who transact business in government securities from, in particular, the registration and financial responsibility requirements of the Act and related regulations. The Department recognizes the potential for duplicative regulation of entities already subject to substantial federal regulation. However, the Department has not included such exemptions in the proposed rules at this time because (i) we believe that the SEC proposed regulation will eliminate the problem for all but true government securities brokers and dealers; (ii) the statutory decision to treat the CFTC differently than the SEC and the financial institution regulatory agencies suggests that, at least with respect to registration, the Department has limited authority to allow CFTC registration to substitute for SEC registration; and (iii) we have not yet been able to gather sufficient information concerning the activities, capital positions, unregulated government securities accounts for customers etc., of entities whose government securities business goes beyond the "incidental" to determine whether exemptions would be consistent with the protection of investors and the public interest.

The Department specifically invites comments concerning modified requirements for FCM's and other

[9] Currently unregulated persons (including subsidiaries and affiliates of financial institutions) and registered brokers or dealers uncertain of their status as government securities brokers or dealers are urged to contact the Office of the Chief Counsel, Division of Market Regulation, Mail Stop 5–1, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, as soon as possible. Financial institutions uncertain of their status should contact their appropriate regulatory agency.

[10] Federal Reserve Bank of New York, Capital Adequacy Guideline for U.S. Government Securities Dealers, May 20, 1985.

[11] Section 240.15c3–1. Unless otherwise stated, all references to existing rules of the Commission are to sections of Title 17 of the Code of Federal Regulations.

[12] Sections 3(a)(43)(B) (government securities brokers), 3(a)(44)(D) (government securities dealers) [15 U.S.C. 78c(a)(43)(B), (a)(44)(D)].

CFTC-registered entities that are government securities brokers or dealers. In particular, we request consideration, by those entities who would not be removed from regulation through the SEC definitional rule, of (i) a financial responsibility requirement under which such an entity would be required to meet the higher of the CFTC's capital rule or the rule proposed in § 402.2; [13] (ii) a financial responsibility requirement under which such an entity would be required to meet the higher of the CFTC's capital rule or the SEC's capital rule; and (iii) a possession or control rule that would exempt from the rules proposed in part 403 securities that were in customer segregation accounts pursuant to 17 CFR 1.20–1.30. In commenting on these and other suggestions, commenters should consider whether the suggested rules would accurately and appropriately reflect risk and adequately protect investors.

II. Section-by-Section Analysis of Proposed Regulations

A. Part 400. Rules of General Application

1. *Section 400.1.* This section notes the requirements of the Act, as amended by the GSA, for regulation, registration and notice of status. It sets forth the principle that, unless otherwise specifically provided, all regulations apply to all government securities brokers and dealers, both those who must register and those who must give notice of their status as government securities brokers or dealers to the appropriate regulatory agency. Exemptions are provided in individual parts or sections of the regulations for registered brokers or dealers and financial institutions where applicable.

The section also states the registration and notice requirements of the Act and cross-references the appropriate regulations providing for registration and notice.

2. *Section 400.2.* This section specifies the Office of the Deputy Assistant Secretary (Federal Finance) as the office within Treasury responsible for the regulations, and directs correspondence, including correspondence concerning exemptions, to that office. The section notes that the appropriate regulatory agencies (the SEC and the financial institution supervisory agencies) and the self-regulatory organizations are responsible for enforcement of the regulations.

3. *Section 400.3.* This section sets out definitions that are applicable, except where otherwise explicitly provided, throughout the proposed regulations. Definitions contained in SEC rules referenced in the proposed regulations are applicable unless otherwise explicitly provided. These definitions are also used in this preamble.

(a) "Act" means the Securities Exchange Act of 1934, including amendments enacted as part of the GSA.

(b) "Appropriate regulatory agency" has the meaning set out in Section 3(a)(34)(G) of the Act, and in general means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board for commercial banks and thrift institutions that are federally chartered or insured and certain foreign and District of Columbia financial institutions, and the SEC for all others. In particular, the appropriate regulatory agency for state chartered non-federally insured commercial banks and thrift institutions and for credit unions is the SEC.

(c) "Commission" or "SEC" means the Securities and Exchange Commission.

(d) "Designated examining authority" and "Examining Authority" mean, for a registered government securities broker or dealer that belongs to only one self-regulatory organization, that organization, and for a registered government securities broker or dealer that belongs to more than one self-regulatory organization, the one designated by the Commission under section 17(d) of the Act.

(e) "Financial institution" has the meaning set out in section 3(a)(46) of the Act. It inc1udes both commercial banks and thrift institutions, both federal and state chartered. It does not include credit unions or subsidiaries or affiliates of banks and thrifts.

(f) "Government securities broker" has the meaning set out in section 3(a)(43) of the Act. As used in the proposed regulations, the term (together with the term "government securities dealer") represents the broadest classification of persons subject to the regulations. With the exceptions noted in section 3(a)(43) of the Act, the term includes registered broker-dealers and financial institutions that effect transactions in government securities for the account of others as well as registered government securities brokers.

(g) "Government securities dea1er" has the meaning set out in section 3(a)(44) of the Act. As used in the proposed regulations, the term (together with the term "government securities broker") represents the broadest classification of persons subject to the regulations. With the exceptions noted in section 3(a)(44) of the Act, the term includes registered broker-dealers and financial institutions that are engaged in the business of buying and selling government securities for their own account, through a broker or otherwise, as well as registered government securities dealers.

(h) "Government securities" has the meaning set out in section 3(a)(42) of the Act. It includes securities issued or guaranteed by the Treasury or by federal agencies (including the Government National Mortgage Association), and also securities (including equity securities) issued or guaranteed by certain government-related corporations such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Student Loan Marketing Association and the Farm Credit System. (Readers are cautioned this list is not exclusive and that new organizations may be formed whose securities would also be covered by this definition.) The term also includes certain off-exchange options, puts, calls, straddles and similar privileges on other types of government securities. In general, securities that were "exempted securities" under section 3(a)(12) of the Act (prior to enactment of the GSA) because of their connection with the United States, are "government securities."

(i) "Registered broker or dealer" means a firm that is registered with the SEC under sections 15 or 15B of the Act and that is also a government securities broker or dealer.

(j) "Registered government securities broker or dealer" means a firm that effects transactions solely in government securities, other exempted securities (not including municipal securities) and/or futures and other commodity interests regu1ated by the CFTC, and is registered pursuant to section 15C(a)(1)(A) of the Act. This term does not include registered brokers or dealers or financial insututions.

(k) "Secretary" means the Secretary of the Treasury.

(l) "Treasury" or "Department" means the Department of the Treasury.

4. *Section 400.4.* This section requires every officer, director or manager of a government securities broker or dealer that is a financial institution not exempt

[13] An FCM that is also a broker-dealer is currently required to meet the higher of the CFTC or SEC capital adequacy rule. 17 CFR 1.17. If such an entity were also a government securities broker or dealer, this proposal would not require consideration by the entity of the § 402.2 rule.

from these regulations under Part 401 of the proposed regulations, who is directly engaged [14] in the management, supervision or performance of any activities of the financial institution as a government securities broker or dealer, as well as salespersons and traders (together "associated persons"), to file with the financial institution and keep current a disclosure form. The form will enable the financial institution and the appropriate regulatory agencies to determine whether such person is subject to a statutory disqualification as provided in section 15C(c) of the Act. Persons who already have on file with their financial institution a current Form U–4 (which is required for persons associated with a registered broker or dealer) or a Form MSD–4 (which is required for associated persons of a bank municipal securities dealer) need not file a new form.

The rule requires the financial institution to verify the information on the form and to file the form with the appropriate regulatory agency. Initially this procedure will be part of the notification required by section 15C(a)(1)(B)(i) of the Act. The requirements of this section do not apply to persons associated with financial institutions that are exempt from registration as provided in Part 401 of the proposed regulations. This section also requires the financial institution to file with its appropriate regulatory agency a notification of the termination of association with the government securities business of the financial institution of an associated person.

The requirements in section 400.4 mirror existing requirements concerning bank municipal securities dealers and are designed to increase the integrity of the entire industry by reducing the ability of persons subject to statutory disqualification to become affiliated with other government securities brokers or dealers, including financial institutions. The Department anticipates that the self-regulatory organizations will impose similar requirements on persons associated with registered government securities brokers and dealers and on registered government securities brokers and dealers.[15] By virtue of the exemption for those who already have filed the U–4, U–5, MSD–4 or MSD–5 forms, and the simplicity of the forms (no information is required relating to professional qualifications), the Department anticipates that the burden imposed by this section will be minimal.

5. *Section 400.5.* This section requires registered government securities brokers and dealers and registered brokers or dealers who are also government securities brokers or dealers to update and keep current with the SEC information on their registration application and notice forms, respectively. Section 400.5 also requires similar updating of notices filed by financial institutions that are government securities brokers and dealers.

6. *Section 400.6.* This section requires government securities brokers and dealers that are financial institutions (and that are not exempt from notice requirements pursuant to Part 401 of the proposed regulations) to file with their appropriate regulatory agency a notice of termination of such status. The notice is required by section 15C(a)(1)(B)(i) of the Act and is similar to the withdrawal requirements imposed on registered brokers and dealers and on bank municipal securities dealers. The withdrawal would become effective 60 days after filing, unless disciplinary action concerning the entity filing the notice had started prior to the date on which the notice was filed. Enforcement actions may, of course, be instituted after that time arising out of occurrences prior to the expiration of the 60 day period.

B. Part 401. Exemptions

Under section 15C(a)(4) of the Act, the Secretary may exempt any government securities broker, government securities dealer or class of such brokers and dealers from any provision of section 15C (a), (b) and (d) of the Act or the regulations issued under those subsections. Any exemption must be consistent with public interest, the protection of investors and the purposes of the GSA. Commenters are asked to consider whether exemptions other than those proposed are necessary or desirable and to provide information responding to the statutory standards for exemption. In particular, comments are particularly requested on whether an exemption for entities whose government securities business is limited to brokering repurchase transactions (a group the Department believes is coincident with brokers of federal funds) should be exempt from regulation as government securities brokers so long as they operate on a fully disclosed basis to both principals in all such transactions.

1. *Section 401.1.* There are thousands of organizations that handle transactions in United States Savings Bonds ("savings bonds"), whether in their capacities as qualified issuing or paying agents or in providing services to customers or employees by forwarding requested transactions to qualified issuing or paying agents or the Treasury. For many of these organizations, savings bond transactions are the only type of government securities transactions they handle. However, it is possible that under a broad interpretation of the definition of government securities broker in section 3(a)(43) of the Act, some or all of these organizations might be considered government securities brokers. The Treasury is therefore proposing, pursuant to its exemptive authority, that if an organization's activities are limited to savings bond transactions and any other activity exempt as provided in Part 401, and it would otherwise be considered a government securities broker, such organization shall be exempt from the requirements of sections 15C (a), (b) and (d) of the Act and the regulations thereunder.

Savings bonds offer terms and conditions that protect investors from risk. Savings bonds are not transferable and therefore are not eligible for trading or for pledging as collateral. Additionally, most savings bond transactions are handled by organizations that have qualified to act as savings bond issuing and paying agents pursuant to 31 CFR Part 317 and 31 CFR Part 321. These agents are governed by those regulations and by the terms and conditions of the application-agreements executed by them at the time of qualification. The remaining organizations that handle savings bond transactions are not qualified savings bond agents but may, as a service to customers or to employees participating in a payroll savings plan, forward applications or other savings bond transactions to an authorized issuing or paying agent or the Treasury. In the case of organizations that only forward savings bond transactions, the Treasury has determined that sufficient customer protection exists because of the limited involvement of these organizations and the terms and conditions of the bonds themselves.

[14] Directors and senior officers of the financial institution who may from time to time set broad policy guidelines affecting the financial institution as a whole that are not, directly related to the conduct of the financial institution's government securities business are not considered to be "directly engaged" in the government securities business of the financial institution.

[15] With respect to registered government securities brokers and dealers who are currently registered with the CFTC, the Department is hopeful that it will be possible for the self-regulatory organizations under the Act and the self-regulatory organizations for the futures industry to work together to minimize the paperwork burden attendant on registration.

It should be noted that the recordkeeping requirements of Part 404 do not apply to the savings bond transactions of any government securities broker or dealer. The Treasury does not consider that any other parts of these regulations are applicable to savings bond transactions.

2. *Section 401.2.* This section provides an exemption for depository institutions that submit tenders or subscriptions for purchase on original issue of U.S. Treasury securities for the account of customers. A depository institution engaging only in such transactions and other activities exempted by Part 401 of the proposed regulations, would be exempt from the provisions of section 15C (a), (b), and (d) of the Act, and the regulations thereunder.

Under the terms of Treasury securities auctions, commercial banks and certain other depository institutions may submit a tender for the account of a customer, provided the customer is identified as the purchaser on the tender form. Generally, payment for the securities also will be handled through the institution submitting the tender. Furthermore, the securities purchased may continue to be held by the customer through that same institution. The Department has concluded that where a depository institution submits tenders for customers, facilitates payment, and perhaps maintains the purchased securities in a purely custodial capacity, the customer will be adequately protected so long as the depository institution complies with the regulations for custodial depository institutions set forth in Part 450 of the proposed regulations.

Therefore, the Department proposes to exempt depository institutions whose only involvement in government securities transactions is the submission of tenders for customers and any other activity exempt from the regulations as provided in Part 401. The exemption is conditioned on the depository institution's agreement to comply with Part 450 of the proposed regulations concerning possession or control of government securities held for customers, thereby obviating a technical legal argument that a financial institution that is a government securities broker or dealer but is exempt under this part is not required to comply with the regulations under Title II of the GSA. The exemption of this section is intended to apply only as long as the depository institution submits tenders and facilitates payment solely as agent for the identified customer. It would not apply to a depository institution that purchases securities itself on original issue and resells them to customers.

3. *Sections 401.3 and 401.4.* These sections exempt from Sections 15C (a) (b) and (d) of the Act and the regulations thereunder, financial institutions that engage in certain limited types of transactions in government securities which, under traditional interpretations of the definitions of "broker" or "dealer," might qualify them as government securities brokers or dealers. For the reasons set forth below, the Department has determined that, for these types of transactions, regulation of a financial institution as a government securities broker or dealer is not necessary for the Protection of investors or to achieve the other purposes of the GSA as long as the institution complies with Part 450 of these regulations relating to custody of government securities held for customers.

Throughout the consideration of the GSA Congress cited estimates of the total number of secondary government securities dealers in the range of 200 to 500 firms, including registered brokers and dealers.[1] The Department has been informed by the federal financial institution regulatory agencies that a very large percentage of the financial institutions in the country engage in the types of transactions involving government securities that are described below, primarily on a customer accommodation basis. Without an exemption for these activities, the total number of government securities brokers and dealers subject to registration or notice requirements would reach well into the thousands. The Department believes this would not be consistent with the intent of Congress.

(a) Section 401.3, relating to brokerage activities

Although the government securities market is primarily a dealer market, many financial institutions effect brokerage transactions as an accommodation for customers. Sections 401.1 and 401.2 of these regulations wou1d exempt financia1 institutions whose brokerage activities are confined to transactions in United States savings bonds or submission of tenders for the account of customers in auctions for U.S. Treasury securities. The Department believes that financial institutions, including federal credit unions,[17] effecting a modest number of other brokerage transactions or effecting such transactions on a fully disclosed basis are, through existing supervision and the requirements of Part 450 of these regulations, adequately regulated to protect investors and do not need to be regu1ated as government securities brokers. Financial institutions engaged in more than 500 brokerage transactions in government securities per year (other than those involving savings bonds or purchases of U.S. Treasury securities on original issue for the account of customers, but including networking transactions), unless all such transactions not exempt under §§ 401.1 or 401.2 are carried on through a "networking" arrangement involving a government securities broker or dealer not exempt under this Part, are not exempt from regulation as a government securities broker.

(b) Section 401.4, relating to dealer activities limited to repurchase transactions and a limited number of reverse repurchase transactions.

A significant number of financial institutions engage in repurchase transactions in which securities held by the Institution are sold, subject to repurchase, to entities other than registered brokers or dealers or government securities brokers or dealers. Financial institutions engage in such transactions to increase yields on their investment portfolios and in so doing to provide customers with a secured, more flexible alternative to certificates of deposit. The transactions are subject to the uniform supervisory policy on repurchase agreements adopted by all the federal financial supervisory agencies.[18] Although that policy is written mainly to protect financial institutions engaging in repurchase transactions as buyers rather than sellers of securities, the policy states, among other things, that banks should obtain written agreements, conforming confirmations identifying specific securities and appropriate margin, and should mark to market term agreements. In addition, of course, the financial institutions engaging in these transactions are subject to governmental

[16] See, e.g., S. Rep. No. 99–426, 99th Cong., 2d Sess. 4 & n.5 (1986); H.R. Rep. No. 99–258, 99th Cong., 1st Sess. 13–14 & n.12 (1985).

[17] Federal credit unions have extremely limited brokerage powers, which are further restricted by their supervisory agency, the National Credit Union Administration ("NCUA"), to acting only on a network basis. See NCUA Interpretive Ruling and Policy Statement 85–1 (Nov. 14, 1985). The Department invites comments on whether similar supervisory safeguards are in place for state-chartered credit unions.

[18] See Office of the Comptroller of the Currency, BC 210, Oct. 31, 1985; Federal Deposit Insurance Corporation, BL–43–85, Nov. 1, 1985; 50 FR 49764 (Dec. 4, 1985, Board of Governors of the Federal Reserve System); 50 FR 44940 (Dec. 6, 1985, Federal Home Loan Bank Board proposed rule).

supervision. Many financial institutions also do a small number of reverse repurchase transactions as an accommodation to customers.

Under traditional interpretations of the term "dealer," such transactions, if regarded as sales and purchases, could make the financial institution a dealer. For the reasons stated above, the Department believes such treatment is inappropriate and unnecessary in the public interest, and therefore is proposing the exemption in this section for financial institutions whose only government securities dealer activities are repurchase transactions and a limited number of reverse repurchase transactions. However, since the financial institution could be regarded as a government securities dealer, although an exempt one, the exemption is available only on the condition that the financial institution agree to comply with the custody requirements proposed as Part 450 of these regulations, which are applicable to financial institutions that are not government securities brokers or dealers. This section also exempts, as fully supervised, financial institutions whose only government securities dealer activities are in a fiduciary capacity, an exemption provided to banks in Section 3(a)(44) of the Act.

A financial institution engaging in more traditional dealer activities, such as purchasing or selling other government securities, as principal, from or to customers, participating in a selling group or underwriting government securities, carrying a dealer inventory and quoting a market in government securities, advertising itself as a government securities dealer, or otherwise holding itself out as a government securities dealer, would not be covered by this exemption.

4. *Section 401.5.* This section exempts corporate credit unions that are generally subject to examination by the National Credit Union Administration ("NCUA") from sections 15C (a), (b), and (d) of the Act and the regulations thereunder if their only government securities dealer activities are the purchase or sale, subject to resale or repurchase, of government securities to other such credit unions and other activities exempted by Part 401.

Corporate credit unions, whose members are credit unions composed of natural persons, provide a valuable service to such members and other natural person credit unions by providing secured liquidity through repurchase agreements involving government securities. The corporate credit union's sales and purchases of securities subject to repurchase and resale might constitute government securities dealer activities under traditional interpretations of the term "dealer." [19] However, both sides to the transaction are subject to federal supervision,[20] and the Department has concluded that the additional burden that would be placed on corporate credit unions whose transactions are so limited is unnecessary for the protection of the natural person credit union investors.

The exemption is available only on the condition that the credit union agrees to comply with the terms of Part 450 of the regulations, relating to custody of government securities by depository institutions, including credit unions.

C. Part 402. Financial Responsibility

The capital adequacy rule of these proposed regulations effectively would apply only to currently unregulated government securities brokers and dealers. The general rule, based on the capital adequacy guideline recommended by the FRBNY,[21] is that a government securities broker's or dealer's liquid capital shall equal or exceed 120 percent of total haircuts, the measure of risk of a government securities broker's or dealer's securities holdings and related financings.

1. *Section 402.1.* The section of the proposed rule would in effect exempt government securities brokers and dealers that are directly subject to the capital requirements of another appropriate regulatory agency from the requirements of this rule. Consequently, government securities brokers and dealers which are financial institutions or registered brokers or dealers are not subject to the capital requirements of this rule if they are subject to the capital requirements contained in the other appropriate federal regulatory framework. This exemption avoids the imposition on adequately regulated entities of potentially conflicting and unduly burdensome regulations in the financial responsibility area. It is noted, however, that the exemption is not available to subsidiaries or affiliates of financial institutions or of registered brokers or dealers, which are not necessarily subject to independent, overlapping capital requirements and where recourse to the parent would not necessarily be available.

Although the Department believes that SEC Rule 15c3–1 [22] does not provide as accurate an assessment of risk for firms that transact business in government securities (alone or in combination with exempted securities and/or CFTC-related commodity interests) as the FRBNY guideline methodology, experience has shown it to be appropriate for entities with a general securities business. In making this assessment, the Department assumes that the SEC will adopt many of its recently proposed modifications to Rule 15c3–1 concerning repurchase and reverse repurchase agreement deficits.[23]

Banks and bank holding companies that are subject to the supervision of the Federal Reserve Board, Comptroller of the Currency, and Federal Deposit Insurance Corporation are, in general, required to maintain a ratio of primary capital to total assets of 5.5 percent and a minimum ratio of total capital to total assets of 6.0 percent.[24] Thrift institutions insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation are also subject to minimum net-worth requirements.[25]

It is the understanding of the Department that the bank capital requirements, which are designed for other purposes, when applied to a normal mix of government securities dealer activities, would be significantly higher than those proposed to be required of registered government securities brokers and dealers. Recently, the three bank regulatory agencies and the Bank of England published for comment a risk-based capital framework.[26] No specific risk-based capital ratio has been proposed at the present time, however, and there may also be some modifications to the risk-based capital structure. Accordingly, it is too early to make a judgment as to the effect of the new proposed risk-based capital requirements on a government securities dealer operation. The Department will monitor this situation

[19] The natural person credit union counterparty in this situation is an investor and is not a government securities dealer.

[20] Although some corporate credit unions are neither federally chartered nor federally insured, all existing corporate credit unions are members of the National Credit Union Administration Central Liquidity Facility and are subject to the NCUA's authority to prescribe certain rules and regulations. 12 U.S.C. 1795f(b)(3). In practice, the NCUA examines all corporate credit unions yearly.

[21] The Federal Reserve Bank of New York, Capital Adequacy Guideline for U.S. Government Securities Dealers (May 20, 1985).

[22] Section 240.15c3–1.

[23] Exchange Act Release No. 34–23602, 51 FR 32858 (Sept. 15, 1986).

[24] See 12 CFR Part 225 Appendix A (Board of Governors of Federal Reserve System); 12 CFR 3.6 (Comptroller of the Currency); 12 CFR 325.3 (Federal Deposit Insurance Corporation).

[25] See 12 CFR 563.13.

[26] See news release of the Comptroller of the Currency, Federal Deposit Insurance Corporation and Federal Reserve Board dated January 8, 1986.

and will continue to evaluate the financial institution exemption in the light of any changed financial institution capital requirements.

Although it is unclear whether the thrift institution capital requirements would also exceed those required under this part for a thrift institution (and not a subsidiary or affiliate) that was a government securities broker or dealer, the Department believes that few, if any, thrift institutions will not be exempt under Part 401. Since all financial institutions are closely supervised and their capital levels receive the close attention of their supervisory agencies, an exemption from the capital requirements being proposed in these regulations is believed warranted. The Department specifically requests comments with respect to the thrift institution exemption, and particularly requests factual information concerning thrift institutions that believe that, under the proposed regulations, they are government securities brokers or dealers not exempt under Part 401.

Government securities brokers that come within the definition of government securities interdealer brokers are allowed to elect to follow the requirements of a provision similar to the municipal securities broker's broker rule of SEC Rule 15c3–1 [27] rather than the capital rule of § 402.2 of the proposed regulations. The Department is considering whether this or another special rule should apply to interdealer brokers who also serve customers other than dealers, and welcomes comments and suggestions on this point.

The capital rule will be effective July 25, 1987, except that, for a three month period, newly registered government securities brokers and dealers will be required only to have and maintain liquid capital (before deduction of any haircuts) of $50,000, except that the minimum for introducing brokers will be $5,000. This delay is necessary to give new registrants an opportunity to put in place the systems needed for the haircut calculations required by the rule while at the same time requiring such firms to have some cushion of capital to protect investors.

2. *Section 402.2.* While many of the basic concepts underlying the proposed rule are the same as those contained in the SEC's Rule 15c3–1, the proposed rule is tailored for participants in the government securities market. The basic standard set out in the proposed rule is that liquid capital, defined to be equal to the SEC concept of tentative net capital with one modification for futures contracts, must exceed measured risk (total haircuts) by at least 20 percent.

In comparison to Rule 15c3–1, the proposed rule eliminates the need to determine aggregate indebtedness. However, the Department recognizes that some government securities dealers and brokers may find the haircut calculations of the proposed rule complex. Consideration was given to allowing registered government securities brokers and dealers the option of meeting the requirements of Rule 15c3–1 rather than the requirements contained in the proposed rule.[28] For the reasons stated below, the Department believes that option is inappropriate for entities transacting business solely in government and other exempted securities.

For firms without a broad range of diversified activities but rather concentrated in the government securities market, the haircut calculation of the proposed rule is a more accurate measure of risk than the haircut calculations of the SEC rule.

The ratio requirement of the proposed rule, liquid capital to risk, is a simpler concept and more appropriate to these firms.

The haircut factors of the proposed rule are based on recent market conditions and will be revised as market conditions change. This not only holds for the factors applying to net positions, but also for the factors that permit a reduction in measured risk for offsetting positions in the same maturity sector or across different sectors. Consequently, the haircut factors are proposed to be a more current risk measurement than the SEC factors, which are not designed to be updated with any frequency.

The proposed haircut methodology also provides a more accurate system for recognizing the reduced risk of hedged positions than the SEC methodology, which in some cases is more generous and in other cases less generous than the proposed rule. Also, the inclusion of financings, mainly repurchase and reverse repurchase agreements, into the total haircut calculation in the proposed rule is a recognition of the importance of a major financing technique in the market and a recognition that term repurchase and reverse repurchase agreements can serve to offset the risk in the position being financed.

Linking capital requirements to aggregate indebtedness or aggregate debit items as computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3) [29] may not be appropriate in all cases for specialized firms. The activities of government securities brokers and dealers may generate very little aggregate indebtedness or aggregate debit items. Consequently, the Department believes that the direct link between liquid capital and measured risk of the proposed rule serves better to focus a government securities broker's or dealer's attention on the amount of liquid capital needed in order to undertake prudentially a given level of risk.

Comparison to the FRBNY Guideline. The proposed rule differs in two principal ways, which are related, from the FRBNY's capital adequacy guideline. The definition of liquid capital has been modified, and one category of haircut has been eliminated.

The FRBNY defined liquid capital to be net capital before haircuts on securities positions (line 3640 of SEC Form X–17A–5 or FOCUS Report) with two adjustments—omission of proprietary charges on commodities (line 3600) and the deduction for reverse repurchase agreement deficits (included in line 3612, "Other Charges and/or Deductions"). These adjustments were required because the FRBNY included haircuts on futures and forward positions and haircuts for credit exposure to counterparties. The proposed rule retains the omission of proprietary charges on commodities, since, as in the FRBNY methodology, haircuts on futures and forward positions are included in the calculation of total haircuts.

The proposed rule, however, does not omit the deduction for reverse repurchase agreement deficits because, unlike the FRBNY guideline, it does not include a "customer exposure haircut." Rather, the Department decided to retain the SEC capital charge for unsecured receivables.[30] In some cases, the FRBNY included both the SEC capital charge and a haircut for unsecured receivables. In order to keep the concept of liquid capital close to the SEC concept of tentative net capital, the

[27] Section 240.15c3–1(a)(8).

[28] Firms that wish to follow Rule 15c3–1 in effect have that option by registering with the SEC as a broker-dealer under Section 15.

[29] Section 240.15c3–3a. Under SEC rules, aggregate indebtedness may not be greater than 15 times the amount of "net capital," the determination of which includes all securities haircuts and other deductions. For broker-dealers electing the alternative net capital requirement of Rule 15c3–1, net capital must be the greater of $100,000 or 2 percent of aggregate debit items in the Reserve Formula. Electing the alternative has the effect of increasing the amount of funds a broker-dealer is required to maintain in a "Special Reserve Account for the Exclusive Benefit of Customers."

[30] Section 240.15c3–1(c)(iv)(B).

choice was made to retain all SEC capital charges and deductions used to determine tentative net capital, except for the charge related to "commodities." To avoid inclusion in the proposed rule of both haircuts and capital charges on unsecured receivables, the customer exposure haircut of the guideline was eliminated. Commenters are invited to address the decision to retain the SEC deductions for unsecured receivables and reverse repurchase agreement deficits and consequently not to include the customer exposure haircut of the FRBNY guideline. The proposed rule also clarifies that the deduction for aged fail to deliver contracts is based on the haircut factors of this proposed rule.

SEC Repurchase Agreement Proposal. The recent SEC proposals with respect to repurchase agreements and reverse repurchase agreements [31] have implications for this proposed capital adequacy rule that commenters are invited to address. Specifically, are the proposed increase in the capital charge for reverse repurchase agreement deficits and the new capital charge for repurchase agreement deficits appropriate and should they be applied to government securities brokers and dealers subject to the proposed rule? Also, is it appropriate to include in this capital rule (in a fashion similar to the SEC proposal) an increase in required capital when a government securities dealer receives margin in connection with a reverse repurchase agreement in excess of 105 percent of the contract value of the agreement, or should provisions relating to such "excess" margin he included in § 403.4 of the proposed rule, relating to possession or control of customer securities?

Calculation of Risk Level. The proposed rule quantifies the risk to the portfolios of government securities brokers and dealers according to a series of haircut factors. The two major types of risk that are measured are credit risk and market risk. The sum of the credit risk haircut and the market risk haircut equals total haircuts or measured risk. Total haircuts are then compared to liquid capital to determine capital adequacy. Appendix A to this preamble is a detailed example of the calculation of capital adequacy under the proposed rule.

(a) *Credit Risk.* The credit risk haircut [32] is the sum of two haircuts used to quantify credit risk—a concentration of credit haircut and a credit volatility haircut. The concentration of credit haircut is equal to the product of a concentration of credit haircut factor of 25 percent and the amount by which the net credit exposure to a single counterparty is in excess of 15 percent of the government security broker's or dealer's liquid capital. Net credit exposure is the dollar amount of funds or securities at risk to the government securities broker or dealer in the event the counterparty defaults less the dollar amount at risk to the counterparty in the event the government securities broker or dealer were to default. There is no concentration of credit haircut for exposure to the government securities broker or dealer's principal clearing bank(s) or principal clearing broker(s).

The credit volatility haircut is assessed on high quality money market instruments which are not U.S. government or agency issues and mature in more than 45 days and futures, forwards and options thereon. A credit haircut volatility factor, set at 0.15 percent (0.0015), is applied to the larger of the gross long position or gross short position in these instruments to calculate this credit volatility haircut.

(b) *Market Risk.* [33] Portfolios of government securities are subject to changes in value due to market fluctuations. This is termed market risk.

For instruments that meet the definition of "Treasury market risk instrument" in § 402.2(e), a Treasury market risk haircut is calculated. These dollar-denominated instruments are most government securities, zero-coupon receipts or certificates based on marketable Treasury notes or bonds, short-term certificates of deposit, bankers acceptances, and high quality short-term commercial paper. Futures, forwards and options on the above instruments and on time deposits whose changes in yield are closely correlated with that of certificates of deposit are included in the definition. [34] Options on futures on the debt instruments listed are also Treasury market risk instruments. Excluded from the definition are mortgage-backed government securities that do not pass through to each security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses. Consequently, government securities that are collateralized mortgage obligations, real estate mortgage investment conduits, and stripped mortgage in obligations are not included in the Treasury market risk haircut calculation. [35]

For positions in instruments and inventory not described above, such as most Eurobonds and foreign currency, the SEC haircut factors and methodology are used. The calculation is called the "other securities haircut." The sum of the Treasury market risk haircut and the other securities haircut is the market risk haircut.

(i) *Treasury Market Risk Haircut.* [36]

(A) *Introduction.* The Treasury market risk haircut methodology of the proposed rule quantifies risk by placing all positions into one of twelve categories and applying three different types of haircut factors—(1) net position haircut factors, (2) offset haircut factors, and (3) hedging disallowance haircut factors—to positions grouped in the categories. Net position haircut factors reflect the price volatility of debt instruments; offset haircut factors, the imperfection inherent in any hedge within a category and the range of price volatility in that category; and hedging disallowance haircut factors, the risk inherent in hedges across categories. In addition, the imperfection of hedging with futures and options is captured with a single futures and options offset factor of 20 percent.

Section 402.2(f)(1) of the proposed rule defines the twelve categories in which Treasury market risk instruments are placed in order to calculate the Treasury market risk haircut. The first ten categories are defined in terms of periods of time, either to maturity of the instrument or to the next scheduled interest rate adjustment in the case of those instruments whose rates change periodically. The last two of these ten categories are for zero-coupon instruments with terms to maturity of ten years or more. Shorter-term zero-coupon instruments are included in the first eight categories according to different time period criteria than for conventional coupon securities. The reason for this is the greater price volatility of zero-coupon instruments than conventional coupon instruments of the same maturity. The final two categories are for fixed-rate and adjustable-rate mortgage-backed securities that are Treasury market risk instruments. These categories are the same as those in the FRBNY guideline.

Section 402.2(f)(2) shows the schedule of net position and offset haircut factors for the twelve categories. Section

[31] Exchange Act Release No. 34–23602, 51 FR 32658 (Sept. 15, 1986).

[32] See § 402.2(g)(1) of the proposed rule.

[33] The market risk haircut calculation is found in Appendix A to the proposed rule. § 402.2a.

[34] In particular, Eurodollar futures are included in the definition of Treasury market risk instrument.

[35] These securities are included in the total haircuts calculation using SEC haircut factors. § 402.2a(b) of the proposed rule.

[36] See § 402.2a(a) of the proposed rule.

402.2(f)(3) shows the category pair hedging disallowance haircut factors and indicates those category pairs for which a reduction in total haircuts is allowed through recognition of the reduction in risk due to cross category hedging.[37]

Schedules A through E, similar to those in the guideline, are presented in Appendix A to the rule and can be used to calculate haircuts and the liquid capital to total haircut ratio.[38]

The haircut factors have been updated to reflect recent market conditions, while retaining the same twelve haircut categories as in the FRBNY guideline for security positions. The Department tentatively plans to review these haircut factors at six month intervals and plans to change them with appropriate notice if warranted by changed market conditions. Also, the mapping of zero-coupon instruments into the maturity categories may change. Commenters are invited to address this aspect of the proposal.

Commenters are also asked to address whether the calculation of risk with respect to options and futures is adequate. The proposed rule follows the FRBNY guideline in this area, but the Department recognizes that a more sophisticated treatment is possible. However, a better measure of risk in this area would substantially complicate the calculation for government securities brokers and dealers. This increased complexity does not appear to be commensurate with the resulting increase in the accuracy of the risk measurement.

(B) *Calculation of the Treasury Market Risk Haircut.*[39] The three haircut factors are used to calculate four different haircuts: the governments offset portion haircut, the futures and options offset haircut, the hedging disallowance haircut, and the residual net position haircut. The sum of these four haircuts is the dollar measure of market risk captured by the Treasury market risk haircut. In the process of calculating the haircuts, some interim haircuts must be calculated. These interim haircuts, unlike the final four haircuts used to determine the Treasury market risk haircut, may be positive or negative numbers. The final four haircuts are always positive or zero.

(*i*) *Net Immediate Position Interim Haircuts and Governments Offset Portion Haircut.*[40] The net immediate position interim haircuts, which are used in the determination of the residual net position haircut, and the governments offset portion haircut are calculated for each category by applying net position and offset haircut factors to immediate positions in Treasury market risk instruments and financings.

The gross long (gross short) immediate position for each category is the sum of the market values of each long (short) immediate position in Treasury market risk instruments that are placed in the category and the value of financings that provide securities (cash) to the government securities broker or dealer. Long and short immediate positions in Treasury market risk instruments are the net long or short position in such an instrument as of the trade date (as long as the time between trade date and settlement date is not longer than five business days or 30 calendar days in the case of mortgage-backed securities). Also, certain net long and short when-issued positions are included as long and short immediate positions in Treasury market risk instruments. With respect to these when-issued positions in Treasury notes and bonds, commenters are requested to address whether the rule should specifically set out a valuation methodology for such positions between announcement and auction date, i.e., before a coupon rate has been set on the Treasury note or bond, and to suggest an appropriate methodology if one is considered necessary.

Most financings, excluding subordinated debt, are included in the gross long and gross short immediate positions. The dominant forms of financing in the government market are repurchase agreements, which provide funds to government securities brokers and dealers, and reverse repurchase agreements, which provide securities. Securities lending and borrowing are included if such borrowing or lending is in effect secured by cash collateral. Financings are included in each category at contract value and according to the term to maturity or time to the next scheduled interest rate adjustment. The underlying securities are not relevant to the placement of the financing in a category. Reverse repurchase agreements and other arrangements to borrow securities against cash collateral are considered

[37] The net position haircut factors are based on the market risk implicit in price volatility as it relates to changes in yields. The sensitivity of prices to yield changes varies with the maturity of a security and the level of yields. Thus the grouping of securities, except for mortgage-backed securities, is related to maturity.

Yield volatility was measured by the observed week-to-week changes in yields, using a benchmark security in each category. Treasury's constant maturity yield series and a comparable series for zero-coupon instruments based on Treasury securities were employed for the first ten categories. Based on data for 1986, a yield change was derived for each category that would encompass approximately 99 percent of expected weekly yield changes. For mortgage-backed securities, volatility was measured directly from data on prices and compared with the price volatility of Treasury securities.

To measure price volatility in the non-mortgage-backed securities categories, benchmark securities were derived that generally correspond to the Treasury original-issue maturities. In the shortest category, there is no Treasury original-issue maturity, thus a 1-month constant maturity series was used. In the 1.5 to 3.5 year category, where there are two original-issue maturities, the data employed were the average of the 2-year and the 3-year data. In the 3.5 to 7.5 year category, where there are three original-issue maturities, the 5-year data were used. The data for the 30-year maturity were used for the 15–30 year category. Zero-coupon maturities were mapped into coupon categories of similar duration. A price for each hypothetical benchmark security was determined using average coupon data and average yield data for coupon instruments and average yield data for zero-coupon instruments for 1986. The price was then recomputed using the average yield plus the yield change that has been described above for each category. For each category, the difference in these two prices as a percent of the original (benchmark) price, when rounded is the net position haircut factor. When multiplied by the dollar net position, the result is the dollar value of potential risk exposure.

The offset haircut factors for each category are based on the difference in the price elasticity with respect to yield of the benchmark security and a hypothetical security with a maturity set at the beginning point of the maturity range of the category. This difference in elasticity is divided by the elasticity of the benchmark security, to which a constant of five percent (0.05) is added to account for changes in the shape of the yield curve and for securities that trade off the curve. The net position haircut factor multiplied by the number calculated above is the offset haircut factor for the category.

Hedging across maturity classes can reduce total risk. As the distance between maturity classes increases, however, the risk associated with the variability of the yield curve increases. Thus in the calculation of risk, the haircut on a net long position in one maturity category does not offset one for one the haircut for a net short position in another category. The hedging disallowance haircut factor determines what percent of the offset that is not permitted. The factors, which are found at § 402.2(f)(3) of the proposed rule, were derived by examining the correlations (R^2) between yield changes in different maturity categories using 1986 data. Hedging is permitted only if yield changes in the two categories are sufficiently well correlated. To compute the factor, the amount by which the movements in yields in one category do not correspond to movements in another category was determined. Another 10 percent was added to reflect the imperfections inherent in any hedge. The results were rounded and grouped into three classes determined by the percent of the hedge being disallowed.

[38] Schedules A through E are included in Appendix A to the proposed capital rule, § 402.2a, not necessarily as a required form that would be used in computing haircuts, but rather as a convenient reference in the computation of haircuts. The SEC or designated examining authority may, at its discretion, require adherence by the government securities broker or dealer to these schedules or to substantially similar forms. The Department requests comments on the utility of these forms and in particular invites suggestions for improving Schedule E.

[39] See Appendix A to this preamble for a detailed example of this calculation.

[40] See §§ 402.2a(a) (1), (2) of the proposed rule.

long positions, while repurchase agreements and other arrangements to borrow funds are considered short positions.

Gross long and gross short immediate positions, including financings, that are placed in Category A (under 45 days) will not contribute to the calculation of total haircuts, since there is no haircut on these positions.

The appropriate net position haircut factor is applied to the net position (gross long position minus gross short position) in each of the twelve categories. This determines the net immediate position interim haircut for each category. (In order to perform the hedging calculation between categories described below, the sign convention is that net immediate position interim haircuts on net long positions are positive, and on net short positions, negative.)

The offset haircut factor is applied to the smaller of the gross long or gross short immediate position in each category to create the governments offset portion haircut. Since offset haircuts cannot be netted, they are all positive. The sum of the offset haircuts for each category is the total governments offset portion haircut.

(*ii*) *Futures and Options Offset Haircut and Aggregate Interim Haircuts.*[41] The calculation of offset haircuts on futures and forward contracts is different from that on immediate positions. The haircuts on these contracts are calculated separately from the haircuts on immediate positions and then these futures and forward haircuts along with haircuts on options (also calculated separately as described below) are consolidated with the net immediate position interim haircuts on immediate positions by category. Schedule D can be used for this consolidation.

To calculate the futures and options offset haircut, interim haircuts on gross long and gross short futures and forward positions are determined by using the net position haircut factors that correspond to the term to maturity of the deliverable security at the time of the maturity of the futures or forward contract, which is henceforth referred to as the maturity of the underlying security. (In the case of a cash settlement contract, the term to maturity of the security or investment on which the cash settlement price is based would be used.) For example, the applicable haircut factor for futures contracts on three-month Treasury bills would be the net position haircut for Category B (45–135 days). However, for purposes of combining these haircuts with the net immediate position interim haircuts on immediate positions, the haircut is placed in the maturity category corresponding to the sum of the remaining time to maturity of the futures contract and the maturity of the underlying security. For example, the interim haircut on a three-month Treasury bill futures contract with four months remaining to delivery would be placed in Category C (4.5–9 months), though the haircut was determined by the net position haircut factor for Category B.

As a practical matter, this shifting of maturity categories will usually be relevant only to futures and forward contracts on short-term instruments. It will, of course, not be relevant to contracts on mortgage-backed securities.

The gross futures or forward interim haircut [42] is the product of the applicable haircut factor and the value of the futures or forward position which corresponds to the current market price of such contract. For example, a futures price of 95 on the 20-year bond futures contract on $100,000 par value would produce a value of $95,000. The interim haircuts on long futures and forwards are positive, and on short futures and forwards, negative.

Gross options interim haircuts [43] are the lesser of (1) the market value of the option or (2) the net immediate position interim haircut on the underlying cash instrument or gross futures interim haircut on the underlying futures contract. Gross options interim haircuts on purchased calls and sold puts are positive, while the interim haircuts on sold calls and purchased puts are negative. The gross options interim haircut is entered in the category in which the underlying instrument would be entered.

Net immediate position interim haircuts are combined with gross option and futures and forward interim haircuts in the same category (the categories in which these haircuts are placed is described above) to form positive and negative aggregate interim haircuts. In each category, the sum of positive interim haircuts equals the positive aggregate interim haircut, and the sum of negative interim haircuts equals the negative aggregate interim haircut. An offset haircut factor of 20 percent is applied to the smaller of the absolute values of the positive and negative aggregate interim haircuts in each category. The sum of these resulting offset haircuts for all the categories is the total futures and options offset haircut.

(*iii*) *Hedging Disallowance Haircuts.*[44] To calculate these haircuts, residual position interim haircuts must be determined for each category. If there are no futures and options positions, the residual position interim haircut for each category is equal to the net immediate position interim haircut described in the section on the government offset portion haircut. If there are futures or options positions, then the positive and negative aggregate interim haircuts for each category are summed to calculate the residual position interim haircut. This interim haircut may be a positive or negative number.

The risk reduction inherent in hedges between categories where the price volatility is reasonably well correlated is reflected by netting the residual net position interim haircuts in these category pairs. Each time two residual position interim haircuts are netted, a hedging disallowance is determined. The sum of these hedging disallowances is the total hedging disallowance haircut.

Section 402.2(f)(2) of the rule shows the category pairs where such netting is allowed and the applicable hedging disallowance haircut factor for these category pairs. Schedule E can be used to calculate the hedging disallowance haircut.

Hedging disallowance haircuts are first calculated for residual position interim haircuts in those category pairs where the hedging disallowance haircut factor is smallest. For each such pair, the hedging disallowance haircut factor is applied to the smaller of the absolute values of the two residual position interim haircuts. The resulting hedging disallowance haircuts are positive. The sum of the two residual position interim haircuts is called a net residual position interim haircut and may be positive or negative.

Net residual position interim haircuts may be paired with other residual position interim haircuts or net residual position interim haircuts. For this purpose, net residual position interim haircuts as described above are considered to be in the category of the larger in absolute value of the two interim haircuts that were netted to produce it and a net residual position interim haircut of zero is placed in the other category. Of course, as before, such netting is only permitted for certain

[41] See § 402.2a(a)(3) of the proposed rule.

[42] See §§ 402.2a(a)(3)(i)(A), 402.2a(a)(3)(ii)(A) of the proposed rule.

[43] See §§ 402.2a(a)(3)(i)(B), 402.2a(a)(3)(ii)(B) of the proposed rule.

[44] See § 402.2a(a)(4) of the proposed rule.

category pairs. Note that each time two interim haircuts are netted, the total hedging disallowance haircut increases, while the total residual net position haircut, described below, decreases.

After all possible netting has been recognized for category pairs with the smallest hedging disallowance haircut factors, the same procedure is applied for haircuts in category pairs with higher hedging disallowance haircut factors. Once all possible (net) residual position interim haircuts have been netted, then all the hedging disallowance haircuts from each netting described above are summed to produce the total hedging disallowance haircut.

(*iv*) *Residual Net Position Haircut.*[45] The absolute values of the (net) residual position interim haircuts remaining for each category after the netting described above are summed to produce the total residual net position haircut.

(ii) *Other Securities Haircut.*[46] For inventory and securities that are not Treasury market risk instruments for the purpose of the Treasury market risk haircut calculation, SEC haircut factors are used. If a position in a Treasury market risk instrument is part of a hedge with an instrument that is not a Treasury market risk instrument, it is permissible to exclude this position from the Treasury market risk haircut calculation and include it in the other securities haircut calculation if such inclusion serves to reduce the other securities haircut. The value of the position taken out of the Treasury market risk haircut calculation and placed in the other securities calculation may not be larger than the position that is being offset in the SEC framework.

Debt-Equity Requirements and Prohibition on Withdrawal of Capital.[47] The proposed rule provides for minimum debt-equity requirements and prohibitions against withdrawal of capital for government securities brokers and dealers. These proposed requirements largely reflect the requirements of paragraphs (d) and (e) of SEC Rule 15c3–1.[48]

D. Part 403. Protection of Customer Securities and Balances

The Act requires the Secretary to promulgate rules to provide safeguards with respect to "the acceptance of custody and use of customers, securities, the carrying and use of customers, deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements and in similar transactions."[49]

The SEC has promulgated a number of rules designed to protect customer funds and securities held by registered brokers and dealers. The primary customer protection rules are Rules 15c3–2 and 15c3–3.[50] Rule 15c3–3 requires that brokers and dealers immediately obtain possession or control of all fully paid customer securities as well as margin securities in excess of a certain specified amount. An important function of the possession or control requirement is to assure that such customer securities are maintained free of all liens and encumbrances. The rule also requires that customers' free credit balances and certain other amounts owing to customers are set aside by a broker or dealer in a special reserve account. In addition, Rule 15c3–2 provides that a broker or dealer may not use customer free credit balances unless the customer receives regular statements indicating the amount owed to the customer and notifying the customer that the funds are not segregated from funds of the broker or dealer and may be used in its business.

These rules have two primary purposes: to protect customer assets in the event a firm requires liquidation and to prevent unwarranted expansion of a firm's business through the use of customer funds and securities. The rules have been viewed by the SEC as an effective means of customer protection. In addition, many registered brokers and dealers that effect transactions in government securities have indicated that from their perspective the rules are generally both workable and effective.

The Department has examined these rules in detail and has concluded that the SEC rules, with mostly minor modifications, will be equally effective to provide protection of customer assets in the government securities market. As a result, the Department proposes, as a general matter, to require compliance with Rule 15c3–3 and certain related rules. Certain proposed modifications to these rules are described in the section-by-section analysis of Part 403. With the exception of certain proposed requirements for control of securities subject to hold-in-custody repurchase agreements, the modifications provide language necessary to apply the SEC rules in the context of the government securities market.

The Department notes that Rule 15c3–3 establishes certain time frames in which a broker or dealer must reduce securities to possession or control, such as the requirement in paragraph (d)(2) to take action on securities shown as "failed to receive" more than 30 calendar days.[51] Although responses to inquiries by the Department did not suggest any significant abuse, some of these time frames for buying in securities to cover shortfalls may be longer than necessary, particularly in the case of transactions in book-entry securities. Comments are requested on whether the time frames should be shortened with respect to some or all classes of securities. Commenters are also requested to suggest any other modifications to Rule 15c3–3 not included in the proposed rule that would be appropriate in the context of the government securities market.

The Department has also considered whether it would be appropriate for the rule governing buy-ins to cover securities shortfalls to provide that a broker or dealer may buy in a substitute security, such as Treasury bills of the appropriate market value. The Department has not adopted this approach because it appears that it could undermine the basic rationale of the rule and because it raises at least two problems. The most important one is that the bills or other substitute securities would need to he viewed as belonging to a specific customer whose securities position had not been covered in order to accomplish customer protection in the event of liquidation of the broker or dealer. The Department is not certain this could be accomplished in these regulations. Second, it would appear that a substitution should not be permitted unless it is explicitly permitted under the terms of the agreement between the dealer or broker and its customer. If a right of substitution is agreed to, then it would not appear necessary to include additional language in the rule.

The Department also invites comments on whether "reverse repurchase surplus"—the amount by which the market value of securities purchased by a broker or dealer in a repurchase transaction exceeds the funds transferred—should be considered a credit item in the reserve calculation under Exhibit A of Rule 15c3–3.[52] In its recent proposal concerning repurchase transactions,[53] the SEC noted that

[45] See § 402.2a(a)(5) of the proposed rule.

[46] See § 402.2a(b) of the proposed rule.

[47] See §§ 402.2 (h), (i) of the proposed rule.

[48] Section 240.15c3–1 (d), (e).

[49] Section 15C(b)(1)(s) [15 U.S.C. 78o–5(b)(1)(A)].

[50] Sections 240.15c3–2, .15c3–3.

[51] Section 240.15c3–3(d)(2).

[52] Section 240.15c3–3a.

[53] Exchange Act Release No. 34–23602, 51 FR 32658 (Sept. 15, 1986).

"some broker-dealers create leverage by obtaining the use of funds through matched repurchase agreements," and proposed an increase in required capital to take this into account. The Department notes that reverse repurchase surplus does not create additional risk to the broker or dealer, but that it creates a liability to a counterparty which might more appropriately be accounted for in the Rule 15c3–3 reserve. Comments are requested on which treatment, if any, is appropriate.

Finally, the Department notes that Part 403 deals with aspects of transactions in the government securities market that may also be affected by other proposed rules that have been published for comment by various agencies. The SEC's recently proposed amendments to rule 15c3–3 impose certain requirements with respect to securities that are the subject of repurchase transactions.[54] On November 28, 1986, the Treasury published for public comment a revised proposed rule governing the transfer of interest in Treasury book-entry securities.[55] Finally, on December 16, 1986, the Board of Governors of the Federal Reserve System published for comment a proposal to reduce payment system risk that arises in connection with, among other things, transactions in book-entry securities.[56] Commenters are asked to give particular consideration to the interaction of all these proposals with the proposed rules set forth below in both Part 403 and Part 450, which contain the rules applicable to custody of government securities held for customers by financial institutions.

1. *Section 403.1.* This section provides that registered brokers and dealers effecting transactions in government securities must comply with Rules 8c–1, 15c2–1, and 15c3–2 and with Rule 15c3–3[57] as modified by § 403.4 below. The modifications (discussed in detail in connection with § 403.4) relate primarily to repurchase and reverse repurchase transactions, and are based on the SEC's recent proposal in this area, noted above. If amendments to the SEC rules substantially similar to those in the § 403.4 modifications are adopted prior to the adoption of the final Treasury rules, the Department intends to revise § 403.1 to provide that compliance with the SEC rule constitutes compliance with this part.

2. *Sections 403.2 and 403.3.* These sections provide that every registered government securities broker or dealer must comply with the SEC rules governing hypothecation of customer securities and the use of free credit balances.

3. *Section 403.4.* This section sets forth the basic rule that, except as otherwise provided in Section 403.1, every government securities broker or dealer must comply with Rule 15c3–3, as modified by paragraphs (a) through (i) of this section; paragraphs (j) and (k) are technical modifications applicable only to registered government securities brokers and dealers.

(a) This paragraph states that the term "broker or dealer" in Rule 15c3–3 includes government securities brokers and dealers.

(b)–(d) Rule l5c3–3 defines "fully paid securities," "margin securities," and "excess margin securities" in terms of the requirements of the accounts in which they must be carried, as set out in Regulation T of the Board of Governors of the Federal Reserve System.[58] More general definitions are included here because the provisions of Regulation T are not always applicable to government securities. The definitions set forth here are intended to describe the commonly understood meanings of the terms "fully paid securities," "margin securities," and "excess margin securities," without reference to the specific accounts in which the securities may be carried. Comments are requested on whether, in the government securities market, 140 percent of a customer's total debit balances is the appropriate cut-off between margin and excess margin securities. Under the SEC rules, a registered broker or dealer is permitted to treat securities with a market value of up to 140 percent of a customer's debit balances as margin securities because ordinarily a bank financing the purchase of such securities will lend only 75 percent of their market value. With respect to government securities, lending at a higher loan to market value ratio is common.

(e) This paragraph provides a specific rule for control of securities subject to a repurchase agreement. Repurchase agreements represent a substantial portion of the daily activity of the government securities market and provide a significant financial and cash management tool for both investors and government securities dealers.[59] Repurchase agreements may be for a specified term or for overnight investment only. Repurchase transactions may also provide investment for an indefinite period by permitting the participant to elect each day whether to continue the repurchase transaction or terminate it.

Typically, a repurchase agreement will be structured in one of three ways. The agreement may require that the securities be delivered to the purchaser or the purchaser's designated custodial bank. An alternative arrangement is for the seller, the buyer, and a third party (usually a custodial bank) to enter into a tripartite agreement under which the third party agrees to hold the securities that are the subject of the repurchase agreement for the benefit of both parties. The third alternative is that the seller of the securities may retain control of the securities and earmark them on its own books as securities subject to a specific repurchase transaction. Under this arrangement, the seller usually will also instruct its clearing bank to segregate the securities subject to repurchase from the securities in the dealer's clearing account. However, the clearing bank will not necessarily be advised of the identity of the buyer of specific repo securities, and the securities will be subject only to the control of the seller and its clearing bank.

Experience over the last several years has indicated that this last type of repurchase transaction, commonly referred to as a "hold in custody" or "letter" repurchase agreement, represents the greatest potential for loss on the part of the investors since the securities purchased remain in the control of the seller. Many of the investors that experienced significant losses in the failures of two government securities dealers, Bevill, Bresler & Schulman, Inc. ("BBS") and E.S.M. Government Securities, Inc. ("ESM"), had entered into hold in custody repurchase transactions with these entities, and it is the investor losses in these cases that provided the impetus for passage of the GSA.

At the same time, as is recognized in the legislative history of the GSA, requiring actual deli.very of all

[54] Ibid.

[55] 51 FR 43027 (Nov. 28, 1986).

[56] 51 FR 45046 (Dec. 16, 1986).

[57] Sections 240.8c–1, .15c2–1, .15c3–2, .15c3–3.

[58] 12 CFR Part 220.

[59] A repurchase agreement is a transaction in which the owner of securities agrees to sell them to another and to repurchase them on a specified date at a specified price. Although the transactions generally are documented as the sale and repurchase of securities, economically the transaction has characteristics of a secured loan. The parties to a repurchase transaction may characterize and account for the transaction in either of these ways. In the discussion that follows, the parties to a transaction will be referred to as the seller and buyer for ease of reference. The use of these terms does not reflect a determination on the part of the Department that for all purposes and in all contexts repurchase transactions must be characterized as sales and repurchases and not as secured loans.

securities subject to repurchase could have a significant detrimental impact on the liquidity of the market. For example, the Senate Committee Report [60] indicates that the Committee concluded that a physical delivery requirement for overnight repurchase agreements in securities guaranteed by the Government National Mortgage Association ("GNMA") might have adverse consequences on the efficiency and liquidity of the government securities market, and that such a requirement would also be impractical for other certificated government securities. With respect to other repurchase agreements, the Committee expressed the expectation that the Secretary would adopt rules requiring physical delivery of the securities to a customer only after a determination that less expensive alternatives, such as segregation of customers' securities and procedures for credit analysis and review of counterparties, would not effectuate the purposes of the Act, and that such a requirement is feasible and justifiable given the need to protect the liquidity of the government securities market.[61] The House Committee Report [62] states that requiring the physical transfer of securities involved in repurchase transactions would impair market efficiency, but that requirements for segregating and designating securities for particular investors would help prevent fraud as well as inadvertent errors that may occur.[63]

Many of the entities that enter into hold in custody repurchase agreements are large institutional investors that are sufficiently sophisticated and informed to make a reasonable assessment of the risks and benefits of a given transaction and a careful evaluation of the creditworthiness and stability of their counterparty. For these investors and for the dealers with whom they enter into these transactions, the hold in custody repurchase agreement provides a convenient and flexible method of financial and cash management. The Department believes that these investors should continue to have the opportunity to make the judgment that the convenience and flexibility provided outweigh any potential risk of loss. Nevertheless, the Department has also concluded that to provide adequate protection to the smaller, possibly less sophisticated investors, it is necessary to establish certain requirements for the control of securities subject to hold in custody repurchase agreements.[64]

Just prior to the enactment of the GSA, the SEC proposed amendments to several of its financial responsibility and customer protection rules that would deal explicitly with securities subject to repurchase agreements.[65] In particular, the proposed SEC rule generally would require possession or control of securities that are the subject of a hold in custody repurchase agreement. However, for repurchase agreements with a contract price of $1,000,000 or greater, possession or control is not required during the trading day. The effect of this exception is to permit securities that are the subject of a hold in custody repurchase agreement to be commingled with the dealer's own securities during the day and to be used to facilitate deliveries of securities to third parties if necessary. Under the proposed SEC rules, the securities would be resegregated from the dealer's own securities at the end of the trading day. Since most repurchase agreements give the dealer the right to substitute collateral, the securities that are segregated each night for a given repurchase transaction may differ from day to day.

The intraday use of securities subject to term hold in custody repurchase agreements appears to be a common practice in the government securities market, and those commenting on the SEC proposal have urged that to eliminate completely the capability of using such securities for deliveries and resubstituting collateral could seriously diminish the efficiency of the market. The amount of securities that may be committed to term repurchase agreements during any one day may be substantial. To require that these securities be monitored during the day, transaction-by-transaction, and that individual instructions to move securities to the dealer's account to facilitate a delivery and to substitute other securities that are acceptable collateral for that transaction, may require real-time operational capabilities that, at the present time, might slow a dealer's daily trading activities and increase costs to unacceptable levels. The proposed SEC rule is designed to allow sufficient flexibility in this area, but at the same time provide adequate protection for the smaller investors who may not fully understand the operational practices of their dealer/counterparties and who therefore cannot make a reasonable assessment of the risks and benefits of a given transaction.

The Department generally agrees with the SEC approach and believes that, if certain requirements are met, the sophisticated investor should still be able to enter into hold in custody repurchase transactions in which the subject securities may not be segregated at all times. The Department further agrees with the SEC that, for the smaller investor, full protection must be afforded by requiring possession or control of the securities subject to repurchase at all times. However, the Department has chosen to vary its proposed rule from the SEC proposal in two significant respects. As noted above, in the event the SEC finally adopts a rule substantially similar to the Treasury rule as proposed, the Department contemplates exempting registered brokers or dealers from the Treasury rule and working with the SEC to resolve any variations in the two rules.

First, the Department has raised the cut-off for round-the-clock segregation from the $1 million proposed by the SEC to $5 million. Based on inquiries and on the size of some of the transactions involved in the BBS and ESM failures, the Department concluded that $1 million was too low a number to reasonably assure protection of all the less-informed investors.

The Department intends the dollar amount cut-off to refer to the aggregate contract price of all outstanding repurchase agreements between a particular buyer and a particular broker or dealer. Comments are specifically invited on both the dollar limit itself and on any operational or definitional problems, such as the difficulty of ascertaining the aggregate contract amount for a given buyer and of defining what constitutes a single buyer, that may arise from permitting application of the limit to the aggregate amount of repurchase agreements between a seller and buyer.

The second way in which the Treasury's proposed rule varies from the SEC rule relates to the repurchase agreement itself. Instead of adopting the more general requirement proposed by the SEC of disclosure of the rights and liabilities of the parties to the agreement, the Department proposes that repurchase agreements must be written and must contain specific consent language if the securities may

[60] S. Rep. No. 99-426, 99th Cong., 2d Sess. (1986).

[61] Ibid. at 16 n.34.

[62] H.R. Rep. No. 99-258, 99th Cong., 1st Sess. (1985).

[63] Ibid. at 16-17.

[64] Similar requirements for securities that are the subject of triparty repurchase transactions or repurchase transactions involving actual delivery to the buyer are unnecessary because those transactions are structured to assure recognition of the buyer's interest in the securities and to eliminate control by the seller.

[65] Exchange Act Release No. 34-23602, 51 FR 32658 (Sept. 15, 1986).

not be segregated at all times. The Department has chosen to require written repurchase agreements and to specify the required consent language for several reasons.

First, the rights and liabilities of parties to a repurchase agreement is an unsettled area of law. Therefore, the disclosure requirement would require brokers and dealers to reach specific legal conclusions in an area in which the law itself is unclear. Second, the Department believes that any language included in a repurchase agreement should be explicit enough to put the less sophisticated investor on notice of the potential risks involved in the hold in custody repurchase transaction. Finally, in the Department's view, the practice of customarily making use of repurchase agreement securities held in custody to accomplish other deliveries committed to by a dealer as part of its ordinary trading activities is inconsistent with the fact that rights in the securities, whether as a sale or as a secured loan, have been conveyed to the repurchase agreement counterparty, unless that counterparty has consented to such use. The Department does not believe that retaining the right to substitute securities, as is done in most repurchase agreements, should be regarded as explicit enough to constitute consent by a counterparty to daily commingling and use of the securities for which it has paid.

For all of the foregoing reasons, the Department proposes to require that a repurchase agreement be written and that the dealer maintain possession or control of securities subject to repurchase at all times unless, for aggregate repurchase transactions of $5 million or more, the buyer has consented to intraday commingling with the dealer's securities and certain other provisions. Compliance with the requirement for a written repurchase agreement may be met by use of a written master repurchase agreement under which the parties to the agreement may initiate a series of distinct repurchase transactions. It should be noted that the rule requires inclusion of the specific wording set forth in § 403.4(e)(4)(iii)(A)(*i*) and (*ii*). In these provisions, the term "seller" is used to refer to the broker or dealer that agrees to sell and subsequently repurchase securities under a repurchase agreement. This word was chosen because of its use in the standard master repurchase agreement of the Public Securities Association ("PSA") which the Department believes has gained wide acceptance in the government securities market. If a different term is used to indicate the initial seller of securities under a specific repurchase agreement, then that term may be substituted for the word "seller." Otherwise, the repurchase agreement should include the precise wording set out in the rule.

The Department also proposes to require that the securities that are the subject of a repurchase agreement be confirmed in writing at initiation of the transaction and with each substitution.

By requiring full-time possession or control of securities subject to a repurchase agreement where the aggregate transactions with a counterparty are under $5 million, the Department does not intend to prohibit substitutions of collateral that the counterparty may agree to pursuant to the terms of the repurchase agreement. However, the Department recognizes that because of operational constraints, substitutions that are intended to be simultaneous may not be completed until the end of the day. Therefore, for transactions with less sophisticated investors, the proposed rule also requires that whenever the aggregate repurchase transactions with a single counterparty are under $5 million, substitutions of securities may be made only with the prior agreement of the counterparty. It is noted that the PSA standard master repurchase agreement provides that substitutions of collateral are subject to the agreement of and acceptance by the counterparty. The proposed provision is included to ensure that a similar provision is included in all repurchase agreements involving transactions aggregating less than $5 million and to make clear that agreement to a specific substitution must be obtained prior to taking any steps toward substitution of securities.

The Department also proposes that the repurchase agreement contain a disclosure concerning coverage under the Securities Investor Protection Act of 1970.[66] Under SIPA, customers of all brokers or dealers registered with the SEC under Section 15 of the Act are eligible for coverage by the Securities Investor Protection Corporation ("SIPC") of losses up to $500,000 in the event of the bankruptcy of such broker or dealer. However, government securities brokers and dealers registered under Section 15C of the Act may not become members of SIPC and their customers would not be eligible for SIPC coverage. Furthermore, SIPC has taken the position that the provisions of SIPA do not protect the counterparty of any broker or dealer under a repurchase agreement. For these reasons, the Department proposes that, for all hold in custody repurchase transactions, the repurchase agreement must disclose that there may not be protection under SIPA, and that to the extent SIPA is at all applicable, the protection is limited to $500,000.

It should be noted that, for purposes of control of securities that are the subject of a repurchase agreement, acceptable control locations are limited to those described in paragraphs (c)(1), (c)(5), and (c)(6) of Rule 15c3–3 and to the additional clearing bank control location described in paragraph (f) of this rule. Comments are specifically requested on whether additional control locations are appropriate or necessary.

(f) This section adds a new paragraph to that portion of Rule 15c3–3 that describes acceptable control locations.[67] This new paragraph describes an account maintained at a clearing bank as a permissible control location for a dealer so long as (1) the account does not include proprietary securities of the dealer, and (2) the clearing bank expressly agrees in its clearing agreement with the dealer that securities in the designated account are not subject to any lien or claim of the clearing bank.

A significant proportion of all outstanding government securities are held in uncertificated form and transfers of such securities are accomplished by means of book-entries on the books of Federal Reserve Banks or financial intermediaries. A substantial number of such securities are held by or through dealers that maintain the securities through banks that provide clearing services to the dealers including extensions of credit to finance dealer positions.

Because Rule 15c3–3 was drafted for a somewhat different environment, where securities are issued in certificated form, the language of Rule 15c3–3 does not clearly apply to securities that are issued in book-entry form only. Furthermore, none of the control locations described in the rule clearly relate to the segregation accounts maintained by dealers at clearing banks. The Department understands that the SEC has interpreted the Rule to be applicable in this situation but concluded that it would be useful to include a specific provision covering this arrangement to avoid unnecessary confusion. The Department also requests comments as to whether additional control locations not

[66] Securities Investor Protection Act of 1970, Pub. L. 91–598, 84 Stat. 1636, as amended (codified at 15 U.S.C. 78aaa-eee).

[67] § 240.15c3–3(c).

specified in the SEC rule would be appropriate or suitable in the context of the government securities market.

(g) If a bank is unable or unwilling to comply with an instruction of the broker or dealer to move securities into the segregated account, the broker or dealer must give an "early warning notice" as described in § 405.5. Such a notice was considered appropriate because a refusal of a bank to segregate securities is likely to be an indication of a situation similar to a "material inadequacy" as described in § 240.17a–5(g)(3).

(h) Rule 15c3–3 provides that nothing contained in the Rule shall be construed as affecting the absolute right of a customer to receive the physical delivery of certificates for fully-paid securities or certain margin securities.[68] This provision has been modified to include the comparable right of a customer to direct the disposition of a security held in book-entry (certificateless) form. All new U.S. Treasury bonds and notes issued after July 1986 are available only in book-entry form. U.S. Treasury bills have been available in exclusively book-entry form since 1977. This provision does not preclude the customer from agreeing in writing to restrictions on its right to dispose of securities.

(i) This paragraph provides that the provision of Rule 15c3–3[69] requiring buy-in of securities after 10 days to complete a sell order of a customer (other than a short sale) applies to government securities. The application of this rule to government securities applies to registered brokers and dealers as well as registered government securities brokers and dealers.

(j) This paragraph conforms Rule 15c3–3 to § 402.2 of these regulations to allow government securities brokers and dealers that have liquid capital that exceeds by a specified amount the liquid capital required under Part 402 and that hold small amounts of customer funds to make the required reserve computations monthly rather than weekly.

(k) This paragraph conforms a portion of the reserve calculation to the net capital rules in § 402.2 of these regulations.

4. *Section 403.5.* This section sets forth the rules for custody of customer securities that are applicable to government securities brokers or dealers that are financial institutions. As a general rule, these financial institutions are directed to comply with Part 450 with respect to custody of securities held for customers or counterparties. For securities that are held for others by the financial institution in its capacity as a government securities broker or dealer, certain additional requirements are imposed that generally parallel the requirements of SEC Rule 15c3–3.

For example, a financial institution that is a government securities broker or dealer and that engages in repurchase transactions is required to comply with provisions that parallel the requirements of § 403.3(e) described above. In addition, the financial institution is required to make daily determinations of the amount of shortfall, if any, of securities required to be in its possession or control and to take steps to obtain securities to cover a shortfall. Section 403.5 does not, however, contain any provisions similar to the requirements of SEC Rule 15c3–2 concerning use of customer funds or SEC Rule 15c3–3 concerning a special reserve bank account for holding customer balances. Rule 15c3–2, by its terms, does not apply to supervised banking institutions and the Department concluded that the exemption should be extended to all supervised financial institutions that are government securities brokers or dealers. Furthermore, because financial institutions generally maintain customer funds as a fundamental part of their business, and because they are supervised in large part to protect their deposits, the Department concluded that it would serve no useful investor protection purpose to impose the added requirement of Rule 15c3–3(e) to require a financial institution to establish a special account for customer funds at another financial institution.

A separate rule was drafted for financial institutions that are government securities brokers or dealers primarily because neither financial institutions nor their regulatory agencies are familiar with Rule 15c3–3. However, the proposed rule is intended to parallel the relevant requirements of Rule 15c3–3. Although the requirements of the proposed rule are stated in less detail than is found in Rule 15c3–3, it is anticipated that its enforcement by the financial institutions supervisory agencies will follow, in practical effect, the Commission's rule.

E. Part 404. Recordkeeping

Section 15C(b)(1)(C) of the Act requires the Secretary to propose and adopt rules that require government securities brokers and dealers to make, keep current and preserve records relating to the operation of their businesses. Part 404 of these regulations responds to that requirement. The proposed rules qenerally adopt analogous rules of the SEC, Rules 17a–3, 17a–4, 17a–7 and 17a–13.[70]

1. *Section 404.1.* This section provides that, for government securities brokers and dealers that are registered brokers or dealers, compliance with applicable SEC rules, with certain modifications pertaining to books and records concerning repurchase and reverse repurchase agreements, will constitute compliance with Part 404. Specifically, registered brokers and dealers (as well as registered government securities brokers and dealers, see § 404.2 below) would be required to: (i) maintain a separate ledger reflecting assets and liabilities resulting from repurchase and reverse repurchase transactions, (ii) record separately on their securities records those securities subject to repurchase and reverse repurchase agreements, and (iii) maintain copies of confirmations they send out with regard to repurchase and reverse repurchase agreements.

These additional recordkeeping requirements will ensure that all repurchase and reverse repurchase agreements are properly reflected, thereby ensuring accountability for the cash and securities involved in such transactions. The additional records required are the records specified in recent proposed amendments to the SEC rules.[71] Comments provided to the SEC on these provisions of the SEC proposal were almost unanimously favorable, with many commenters indicating that they already comply as a matter of good business practice. If the amendments to the SEC rules are adopted prior to the adoption of the final Treasury rule, § 404.1 will be modified to reflect the adoption of the amendments.

2. *Sections 404.2 and 404.3.* Under these sections, registered government securities brokers and dealers are required to make, keep current and preserve the types of records required by SEC rules 17a–3, 17a–4 and 17a–7,[72] with limited modifications relating to the different financial responsibility rules applicable to registered government securities brokers and dealers. In addition, registered government securities brokers and dealers would be required to maintain the books and records pertaining to repurchase and reverse repurchase agreements that are described above.

The Department proposes adoption of the SEC rules with modifications because those rules are well understood

[68] § 240.15c3–3(l).

[69] § 240.15c3–3(m).

[70] §§ 240.17a–3, .17a–4, .17a–7, .17a–13.

[71] Exchange Act Release No. 34–23602, 51 FR 32658 (Sept. 15, 1986).

[72] §§ 240.17a–3, .17a–4, .17a–7.

by many government securities brokers and dealers, the audit community and the self-regulatory organizations. During the consultation process prior to issuance of these proposed rules, the Department found that many currently unregulated government securities brokers and dealers are affiliated with registered brokers or dealers that must comply with the SEC rules, or with registered municipal securities dealers that must comply with similar rules. These communities generally favored adoption of recordkeeping and record preservation rules that follow the SEC rules.

3. *Section 404.4.* This section provides that financial institutions that are government securities brokers and dealers subject to specified recordkeeping rules of their appropriate regulatory agency,[73] are exempt from the recordkeeping and preservation requirements of Part 404, except for two types of books and records. Specifically, such financial institutions would be required to maintain records pertaining to securities positions and to associated persons of such financial institution.[74] Both types of records are already required of bank municipal securities dealers.[75] Position records are essential if a dealer is accurately to keep track of its holdings and their locations, and are the key to any assessment by an appropriate regulatory agency of the risk of a dealer operation within a financial institution. Maintenance of associated person records is needed to protect the integrity of the market in government securities by enabling financial institutions and their regulators to locate persons whose past activities make their participation in the market as brokers or dealers questionable and to take appropriate action with respect to such persons.

This partial exemption from the recordkeeping and record retention requirements recognizes that these financial institutions are already subject to federal supervision, which explicitly includes recordkeeping requirements relating to securities activities. Requiring these institutions to follow another set of recordkeeping requirements would be unduly burdensome and would not promote the purposes of the Act. Compliance with the recordkeeping requirements of the bank supervisory agencies and maintenance and preservation of records on securities positions and associated persons will protect investors and is consistent with the public interest.

4. *Section 404.5.* This section requires registered government securities brokers and dealers to comply with SEC Rule 17a–13,[76] requiring a quarterly count of all securities, verification of securities records and comparison of the count and records. Although the count portion of the rule is written in terms of physical securities, the portion relating to accounting for securities not in a dealer's possession requires the equivalent of a count of book-entry securities. The rule is an important check on the accuracy of a firm's operations and recordkeeping and as such is an important aspect of investor protection.

5. *Section 404.6.* This section requires financial institutions that are government securities brokers or dealers to conduct annual counts of book-entry and definitive government securities held for customers and to verify and reconcile records. Financial institutions hold securities for a variety of customer purposes, frequently transferring customer securities held by virtue of the dealer function to the safekeeping and trust departments. Trust department securities are, by state and federal law and examination policy, required periodically to be reconciled to customer accounts.[77]

Proposed Part 450 of these regulations would impose periodic count and related requirements for custodial holdings of government securities by financial institutions that are not government securities brokers or dealers. This rule requires financial institutions that are government securities brokers or dealers not exempt from regulation pursuant to Part 401, to count, reconcile and verify annually all government securities held for customers outside of trust departments. The count of book-entry securities and of definitive securities not in the financial institution's possession should be accomplished by verifying the financial institution's records with those of the depositories, depository institutions or Federal Reserve Bank that hold securities accounts for the financial institution.

F. Part 405. Reporting and Audit Requirements.

The reporting and audit regulation generally follows the provisions of SEC Rules 17a–5, 17a–8 and 17a–11.[78] Registered government securities brokers and dealers that clear transactions or carry customer accounts will be required to file monthly reports similar to Part I of the current SEC FOCUS report (Form X–17a–5, § 249.617 of this title) demonstrating compliance with capital adequacy requirements. All registered government securities brokers and dealers will be required to file quarterly reports containing unaudited financial statements, and an annual report certified by an independent public accountant. The accountant's report is to include, among other things, schedules concerning liquid capital and customer reserve requirements and a report on internal accounting controls, including any material inadequacies in those controls. Financial institutions that are government securities brokers or dealers will, with one exception, be exempt from reporting requirements being imposed on nonfinancial government securities brokers and dealers.

1. *Section 405.1.* Compliance with Rules 17a–5, 17a–8 and 17a–11 by registered brokers and dealers who are also government securities brokers and dealers will constitute compliance with the reporting and audit regulations. Since registered brokers or dealers will continue to be required to determine net capital according to SEC Rule 15c3–1,[79] additional reporting and audit requirements are not necessary.

The Department has determined that the additional burden that would be created by requiring financial institution government securities brokers and dealers to comply with additional reporting requirements is unnecessary. Financial institutions are subject to regular capital reporting requirements,[80] and are also subject to regular examination by supervisory agencies. Moreover, the Department proposes to exempt financial institution government securities brokers and dealers from the capital adequacy requirements of Part 402 of these regulations.[81] Government

[73] See 12 CFR Part 12 (Office of the Comptroller of the Currency); 12 CFR Part 208 (Board of Governors of the Federal Reserve System); 12 CFR Part 344 (Federal Deposit Insurance Corporation). Section 404.4 provides that such regulations are to be complied with without regard to the exemptions therein for transactions in U.S. government or federal agency obligations, 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), 12 CFR 344.7(a).

[74] See discussion of records concerning associated persons at § 400.4 above.

[75] See Municipal Securities Rulemaking Board Rule G–8; Office of the Comptroller of the Currency, Comptroller's Handbook for National Bank Examiners, § 204.1, at 6 (August 1985).

[76] Section 240.17a–13.

[77] See, e.g., Comptroller's Handbook for National Trust Examiners, § 401.4.

[78] Sections 240.17a–5, .17a–8, .17a–11.

[79] Section 240.15c3–1, § 402.1 of the proposed regulation.

[80] See, e.g., 12 U.S.C. 161, relating to call reports, and regulations thereunder.

[81] See § 402.1(c) of the proposed regulations.

securities brokers and dealers that are financial institutions will be subject to the proposed regulation concerning reporting of foreign currency transactions, as are registered brokers and dealers under SEC Rule 17a–8.[82]

The section provides that all requirements of the part, except the reporting requirements, will become effective on July 25, 1987. Therefore, for example, registered government securities brokers and dealers will be required to have engaged an independent public accountant by that date. The monthly reporting requirement is delayed until the first month within which a firm becomes subject to the capital adequacy requirements, which under this proposal will be October, 1987. Registered government securities brokers and dealers will be required to file unaudited quarterly reports for the quarter ending September 30, 1987, and will be required to file quarterly reports on the appropriate form starting with the quarter within which they first become subject to the capital adequacy rules, which under this proposal will be the quarter ending December 31, 1987.

2. *Section 405.2.* This section establishes the requirements for financial reporting by and audit of registered government securities brokers and dealers. It provides that, with limited modifications, registered government securities brokers and dealers must comply with SEC Rule 17a–5.[83] The Department's discussions with the SEC, the self-regulatory organizations, government securities brokers and dealers, and representatives of the accounting profession, all indicated that these requirements are appropriate to meet the purposes of the Act and feasible to implement without excessive burden. The requirement for annual certified financial statements is statutory.[84]

The major provisions of Rule 17a–5, as modified, are:

(a) Registered government securities brokers and dealers that clear transactions or carry customer accounts must file monthly Part I of Form G–405 [85] (§ 449.5 of this chapter), showing liquid capital and total haircuts calculations;

(b) All registered government securities brokers and dealers must file quarterly Part II or Part IIA of Form G–405, consisting largely of unaudited financial statements;

(c) All registered government securities brokers and dealers must file audited annual financial statements certified by an independent public accountant;

(d) Registered government securities brokers and dealers other than introducing brokers must send investors an annual audited statement of financial condition (including a footnote concerning capital adequacy and a statement that audited financial statements and any audit report commenting on material inadequacies are available for inspection), and an unaudited statement as of the date six months from the date of the audited statement;

(e) Registered government securities brokers and dealers must engage an independent public accountant to conduct an annual audit of the registered government securities broker or dealer, and must file a statement concerning such engagement, and, if applicable, the termination of the engagement and replacement of auditors;

(f) Annual financial statements must be audited by an independent public accountant according to generally accepted auditing principles;

(g) The audit must be sufficient to enable the auditor to comment on material inadequacies, if any, in the accounting system, internal accounting controls, procedures for safeguarding securities, and in obtaining and maintaining possession or control of customer securities; and

(h) Material inadequacies must be reported within 24 hours of the time the auditor notifies the chief financial officer of the condition.

The proposed regulation provides that the SEC may declare effective a plan by a self-regulatory organization under which filings may be made with the designated examining authority rather than the Commission. The Department anticipates that the Commission will approve such plans.

3. *Section 405.3.* This rule provides that registered government securities brokers and dealers must comply with SEC Rule 17a–11, [86] concerning early warning to the Commission and designated examining authorities of capital difficulties. The rule, as modified, provides that if a registered government securities broker's or dealer's liquid capital falls below the required level established in § 402.2 of the regulations, the firm shall give notice to the Commission and the appropriate self-regulatory organization of that fact on the day it occurs. Within 24 hours, the registered government securities broker or dealer must also file a Part II or IIA of Form G–405.

In addition, if liquid capital falls below 150 percent of total haircuts, determined in accordance with § 402.2 of the regulation, the registered government securities broker or dealer is required to file Part II or Part IIA monthly until liquid capital stays above the 150 percent level for three consecutive months. The purpose of this regulation, in coordination with other early warning regulations that the self-regulatory organizations are expected to adopt, is to allow the registered government securities broker or dealer and the enforcement authorities an opportunity to alter the firm's business practices to bring it back into compliance, and to protect customers, without requiring a shut-down or complete liquidation of the firm's business.

Section 405.3 also requires notice to the Commission and the appropriate self-regulatory organization of failure to keep the books and records required by § 404.2 of the regulations or upon discovery or notification by an independent public accountant of a material inadequacy, as defined in Rule 17a–5(g).[87]

4. *Section 405.4.* This section requires registered government securities brokers and dealers and government securities brokers and dealers that are financial institutions to comply with the requirements of 31 CFR Part 103, concerning currency and foreign transactions. The effect of this requirement, which parallels Rule 17a–8 [88] for registered brokers or dealers, is that the regulations are enforceable under the Act as well as under the Currency and Foreign Transactions Reporting Act (the Bank Secrecy Act).[89]

G. Part 450. Custodial Holdings of Government Securities by Depository Institutions

Part 450 sets out regulations applicable to depository institutions that hold government securities for customer accounts, whether directly or through correspondent banks, trust companies, Federal Reserve Banks, or other custodial arrangements, but do not fall within the definition of a government securities broker or dealer. These regulations provide custody, recordkeeping, and other requirements

[82] Section 240.17a-8.

[83] Section 240.17a–5.

[84] Section 15C(b)(1)(B) [15 U.S.C. 78o–5(b)(1)(B)].

[85] The version of the SEC FOCUS Report applicable to registered government securities brokers and dealers.

[86] Section 240.17a–11.

[87] Section 240.17a–5(g).

[88] Section 240.17a–8.

[89] Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–23).

applicable to government securities held for customers, including those purchased or sold subject to resale or repurchase. Depository institutions that are exempt from the requirements of Section 15C of the Act under Part 401 of these regulations, as well as certain depository institutions that are government securities brokers or dealers (see § 403.5) would also be subject to the Part 450 regulations.

Depository institutions often provide custody or safekeeping services involving the purchase of government securities for a customer. Depending on the size and geographic location of the depository institution, these securities may be held in a custody account maintained at a correspondent bank for the depository institution. If the securities are issued only in book-entry form, then the depository institution or its correspondent will generally maintain such securities in a securities account on the books of a Federal Reserve Bank.

There currently is no explicit regulatory or supervisory framework governing the practices of depository institutions providing custodial or safekeeping services for customers except where securities are held in a fiduciary capacity. Without such standards, there is the potential for inadvertent or other actions that can harm customers. The development and increasing use of certain types of transactions involving these securities, such as due bills, suggests the potential for problems may be increasing. The GSA therefore mandates promulgation of more explicit standards of conduct which will help the supervisory agencies assure that all institutions conform to good business practices in this area. The Department believes that the proposed regulations largely codify existing practices of responsible financial institutions.

1. *Section 450.1.* This section states that the Part 450 regulations apply to all depository institutions that hold government securities for customers, including in particular those who are exempt from regulation as government securities brokers or dealers under Part 401 of the proposed regulations. Unlike the regulations under subchapter A, the regulations under part 450 apply to credit unions.

2. *Section 450.2.* This section defines the terms "appropriate regulatory agency," "customer," "depository institution," "fiduciary capacity" and "government securities" for the purposes of this subchapter. The definition of appropriate regulatory agency makes explicit the statutory determination that, except in the case of federally-chartered or federally-insured credit unions for which the NCUA is the appropriate regulatory agency, where another agency is not explicitly designated in section 3(a)(34)(G) of the Act, the SEC is the appropriate regulatory agency. This would be the case with respect to state-chartered non-federally insured banks, thrift institutions, and credit unions. References to the NCUA in Title II of the GSA as an agency whose standards might substitute for the Secretary's make it clear that, for the purposes of Title II, NCUA was meant to be considered an appropriate regulatory agency. The definition also reflects the fact that the Federal Home Loan Bank Board will act on behalf of the Federal Savings and Loan Insurance Corporation.

The customer definition is meant to ensure that repurchase agreement counterparties that are investors, rather than brokers or dealers, are protected by the provisions of this part. The definition of fiduciary capacity, which in essence requires that the depository institution have the power to exercise discretion, is substantially the same as the definition of "fiduciary" in 12 CFR 9.1, concerning fiduciary powers of national banks. The definition of "government securities" notes that, for purposes of Part 450, off-exchange puts, calls, straddles, options or privileges on government securities are not themselves government securities.

3. *Section 450.3.* This section provides an exemption from the regulations of Part 450 for government securities held in a fiduciary capacity by certain depository institutions or in a trust department in such an institution. The GSA provides that, prior to adopting regulations under Title II, the Secretary shall determine whether the rules and standards of the appropriate regulatory agencies and the National Credit Union Administration Board adequately protect government securities held for customers by depository institutions subject to their jurisdiction. The Department was not able to make such a determination with regard to custodial holdings generally. As described below, however, it appears that holdings of government securities in a fiduciary capacity by depository institutions are adequately regulated by depository institutions subject to the supervision of certain of the appropriate regulatory agencies. This determination does not extend to the rules and standards of the National Credit Union Administration Board, since credit unions generally do not exercise trust powers, and the Board does not generally regulate fiduciary activities.

Based on the information provided by the appropriate regulatory agencies and on the Department's own analysis, the Department has determined that holdings of government securities in a fiduciary capacity by depository institutions under the regulatory jurisdiction of the appropriate regulatory agencies are adequately regulated.[90] Such depository institutions are generally subject either to state or federal laws and regulations governing the safekeeping of fiduciary assets. They are also subject to examination procedures that generally require (i) review of the institution's systems and procedures to ensure that assets are adequately protected; (ii) review of applicable laws, regulations, and fiduciary principles governing the safeguarding of assets; (iii) review of the institution's accounting system to insure that records are accurate and reliable; and (iv) review of the adequacy of the institution's audit program. Accordingly, such depository institutions are exempt from § 450.4 with regard to their fiduciary holdings of government securities, provided they adhere to the applicable requirements imposed by their appropriate regulatory agencies. This exemption also extends to holdings of government securities for customers in a custodial capacity by such depository institutions, as long as such holdings are within the trust department and the depository institution agrees, with respect to such custodial holdings, to adhere to the rules applicable to securities held in a fiduciary capacity.

The Department does not anticipate that subsequent modifications of the applicable rules and standards will make this exemption inappropriate. However, the Department expects the regulatory agencies to inform the Department of any material revisions of such rules and standards.

4. *Section 450.4.* Section 450.4 sets out basic requirements for custodial holdings of government securities by depository institutions. The most fundamental of these safeguards, set out

[90] Letter from A. David Meadows, Associate Director, Division of Bank Supervision, Federal Deposit Insurance Corporation to William J. Bremner, Deputy Assistant Secretary (Federal Finance), Treasury Department (Jan. 28, 1987); Letter from Owen Carney, Director, Investment Securities Division, Office of the Comptroller of the Currency to William J. Bremner (Jan. 17, 1987); Letter from Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System to William J. Bremner (Jan. 16, 1987); Letter from Robert S. Plotkin to Mary Ann Gadziala, Assistant General Counsel (Banking & Finance), Treasury Department (Dec. 22, 1986); Memorandum from Owen Carney to Mary Ann Gadziala (Nov. 26, 1986).

at §§ 450.4(a) and (b), are the requirements that customers' securities be kept separate from those of the depository institution, that the depository institution maintain possession or control of customers' securities and that customers' securities be kept free of all liens unless expressly agreed to in writing by the customer. This requirement applies both to securities maintained in definitive (physical) form and securities maintained in book-entry form. In the case of physical securities, this might be accomplished by safekeeping in a separate part of the depository institution's vault or by delivery to another institution. In the case of book-entry securities, a depository institution would need to maintain on its own records separate securities accounts for each customer, on the one hand, and separate accounts for securities owned by the depository institution on the other. Similar account separation would also be necessary for each level in any chain of correspondent relationships through which government securities are being maintained. Where government securities are being maintained for customers at a Federal Reserve Bank, a correspondent bank or other custodian, the depository institution would need to instruct such entity to maintain possession or control of such securities free of any charge, lien, or claim of any kind in favor of the correspondent or other custodian or any persons claiming through them. To the extent it has received such an instruction, the correspondent bank or other custodian would be required to comply with Part 450 with respect to its custody of those securities held for customers of the depository institution, as well as securities held directly for customers of the correspondent.

Section 450.4(c) imposes a number of recordkeeping requirements on depository institutions holding securities for customers. Correspondent banks and other custodians of both proprietary government securities of a depository institution as well as government securities belonging to customers of that depository institution could comply with these requirements by maintaining separate sets of records, one reflecting securities held for the depository institution's own account and another reflecting securities held for the account of the depository institution's customers. The depository institution would be responsible for maintaining records identifying the interests of each customer in the securities so held.

Section 450.4(d) requires periodic counts of government securities held for customers in both physical and book entry form. For definitive securities not in the possession of the depository institution and for all book-entry securities, the count would be accomplished by verifying the depository institution's records with those of the custodial entities on whose books the depository institution has a securities account. Such entities include depositories, correspondent banks, and Federal Reserve Banks.

The frequency of the required counts should be determined by the scope of the depository institution's custodial operations, the volume of its holdings, and the frequency of delivery and receipt of cash or securities. For example, a small bank holding government securities for a few relatively inactive customers might conduct annual counts. On the other hand, a bank that safekeeps government securities for active traders might need to conduct counts weekly or more frequently.

The requirements set forth in § 450.4 are similar to, but less burdensome than, the requirements imposed on trust departments through the regulatory and examination process. Compliance with these requirements should not add significantly to the cost of providing custodial services.

III. Executive Order 12291; Regulatory Flexibility Act; Burden on Competition

Section 402 of the GSA requires that these proposed regulations be published within 120 days of the date of enactment of that act.[91] Therefore, the Department's opportunity to determine the effect of these proposed regulations on the economy, on small entities and on competition, has been very limited. However, based on discussions with government securities brokers and dealers, including those currently subject to federal regulation and those that are not, it is the Department's view that the proposed regulations will not impose any significant cost on those affected or affect the economy in a manner other than that explicitly required by the GSA. In addition, the Department believes that the proposed regulations will not have an unnecessary or inappropriate differential impact on classes of government securities brokers or dealers such as to create a burden on competition.

In particular, the Department believes the following decisions minimize the regulatory burden to that required by the statute:

(a) To limit any additional burden on registered brokers or dealers by deeming compliance with existing rules under Section 15 of the Act to be compliance with the proposed rules, with modifications related solely to anticipation of the SEC's proposed rulemaking concerning repurchase agreements;[92]

(b) To minimize additional burdens on financial institutions by (1) providing exemptions for activities deemed not to be within the contemplation of the statute and (2) largely accepting compliance with existing financial institution regulation as compliance with the proposed rules;

(c) To adopt in large part the possession or control, reporting and audit regulations of the SEC, with which many currently unregulated government securities brokers and dealers are familiar;

(d) To adopt in large part the recordkeeping regulation of the SEC, with which many currently unregulated government securities brokers and dealers are familiar and, in many cases, already in compliance; and

(e) To treat dealers in all types of government securities similarly and, in particular, not to distinguish between U.S. Treasury and agency securities (except for certain mortgage backed securities in which principal and interest do not flow through to all holders on a pro rata basis) for purposes of market risk haircuts in the capital adequacy requirement.

In addition, the Department believes that the impact of these regulations will be minimized because a large number of potential registrants do not hold customer securities and/or funds. Finally, Florida's recently enacted requirement that government securities brokers and dealers in that state register with the Commission under section 15 of the Act,[93] as well as information obtained from entities thought to be unregistered government securities brokers and dealers, suggest that many of these entities are registering under section 15 or are merging government securities operations into already registered brokers or dealers. Once an entity has registered under section 15, the proposed regulations will have minimal additional impact.

Accordingly, the Department has concluded that the proposed regulations do not constitute a major regulation for purposes of Executive Order 12291 and that a regulatory impact analysis is not

[91] GSA, supra note 6, § 402.

[92] Exchange Act Release No. 23602, 51 FR 32858 (Sept. 15, 1986).

[93] Fla. Stat. § 517.12(16) (Supp. 1986).

required. Similarly, it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. However, the Department invites comments on these determinations, particularly with respect to the following:

(a) What entities will be affected by the proposed regulations, and what compliance costs will be incurred? Commenters should consider the statutory requirements and distinguish among the sections of the proposed regulations, particularly distinguishing between the cost of being required to have additional capital (if that would be the result of compliance with the capital adequacy requirement) and the cost of developing and implementing systems to comply with the regulations.

(b) What will be the effect on the integrity, efficiency and liquidity of the government securities market of requiring government securities brokers and dealers to maintain effective possession or control of customer securities? In particular, comments are invited on the requirements in proposed § 403.4 that repurchase agreements be entered into only pursuant to written agreement and that brokers or dealers maintain intraday control of securities that are the subject of term repurchase transactions of under $5,000,000 per customer.

(c) Will a substantial number of small entities be affected by the regulations, and if so to what extent? Commenters should consider not only the potential regulatory burden on small entities that are government securities brokers or dealers but also the potential benefits to small investors that may arise from the proposed regulations.

(d) Will the proposed regulations have differential impacts on classes of government securities brokers or dealers such that they would have an unnecessary or inappropriate burden on competition?

(e) Does the format of the regulations, using cross-references to SEC regulations for most rules applicable to registered government securities brokers and dealers and thereby adopting all SEC interpretations, enhance the ability of firms, particularly those already familiar with SEC rules, to comply?

If, on the basis of comments received and further investigation by the Department, the Department determines that the regulations constitute a major rule or are likely to have a significant economic impact on a substantial number of small entities, the Department will prepare and make available the required Regulatory Impact or Regulatory Flexibility Analysis.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on these requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Department of the Treasury, Washington, D.C. 20503, and to the Department of the Treasury at the address previously specified.

Appendix A—Example of Capital Computation

Example (1). On October 31, 1986 firm A's proprietary position contains a long position of Treasury notes due November 15, 1991 with a market value of $20 million and a short position of Treasury notes due October 15, 1990 with a market value of $30 million. The firm would enter these holdings on schedule B,[1] "Calculation of Net Immediate Positions in Securities and Financings", in row F (3.5–7.5 year maturity category for conventional securities) as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
F 3.5–7.5 yr. (3–5.5 yr.) ..			+20	−30	+20	−30	+20	−10
					(1+3)	(2+4)		(5+6)
Column No.	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (2). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Example 1, a long position of Treasury bills due September 3, 1987 with a market value of $50 million. This bill position has been financed by a $50 million repurchase agreement terminating on August 14, 1987. The firm would enter these holdings on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in row D (9–18 month maturity category for conventional securities) as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
D 9–18 mn.		−50	+50		+50	−50	+50	0
					(1+3)	(2+4)		(5+6)
Column No.	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (3). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 and 2, a long position in commercial paper which has received a rating in one of their three highest categories from two nationally recognized statistical rating organizations and has a market value of $70 million, and a long position in a Eurodollar certificate of deposit with a market value of $80 million. The commercial paper matures on January 30, 1987, and the Eurodollar CD matures on

[1] Because Schedule A can only be filled out after the haircut calculations are completed, it is located in the last of these examples.

February 13, 1987. The firm's proprietary position also contains short positions in a Treasury bill maturing on November 28, 1986 with a market value of $100 million, a domestic negotiable certificate of deposit maturing on March 31, 1987 with a market value of $90 million, and commercial paper which has not received a rating in one of their three highest categories from at least two nationally recognized statistical rating organizations. This commercial paper has a market value of $40 million and matures on May 15, 1987. The firm would enter the holdings of the Treasury bill, the highly-rated commercial paper, and the domestic and Eurodollar CDs on Schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in rows A, B, and C (0–44 day, 45–134 day, and 135 day–9 month maturity categories for conventional securities), as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
A 0–44 days				−100	0	−100	0	−100
B 45–134 days			+150		+150	0	0	+150
C 135 days-9 mn				−90	0	−90	0	−90
					(1+3)	(2+4)		(5+6)
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions." The $40 million position in commercial paper which is not rated in one of their three highest categories by at least two rating agencies is not entered on this schedule because it is not a qualified money market instrument. The haircut on this position should be calculated as specified by the Security and Exchange Commission's Rule 15c3–1 and entered on Schedule A under "Other securities (use SEC factors)."

Example (4). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 and 3, long positions in a coupon stripped from a U.S. Treasury bond through the STRIPS program and due November 15, 1995 with a market value of $50 million, and a coupon physically stripped from a Treasury security in bearer form due November 15, 1988 with a market value of $15 million. It also contains a short position in a receipt based on a single coupon or principal payment from a Treasury security. The payment is due on November 15, 2001 and has a market value of $45 million. The firm would enter these holdings of zero-coupon securities on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in rows H, E, and I (9–12 year, 1.5–3 year, and 12–21 year maturity categories for zero-coupon instruments), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
E 1.5–3.5 yr. (1.5–3 yr.)			+15		+15	0	0	+15
H 15–30 yr. (9–12 yr.)			+50		+50	0	0	+50
I (12–21 yr.)				−45	0	−45	0	−45
					(1+3)	(2+4)		(5+6)
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (5). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 4, a long position in FNMA mortgage-backed securities with a market value of $30 million, and a short position in GNMA I adjustable rate mortgage-backed securities with a market value of $20 million. The firm would enter these holdings of mortgage-backed securities on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in the rows marked MB and AR (the categories for mortgage-backed and adjustable rate mortgage-backed securities), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
MB mortgage-backed			+30		+30	0	0	+30
AR adjustable rate mortgage backed				−20	0	−20	0	−20
					(1+3)	(2+4)		(5+6)

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS—Continued

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (6). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 5, a short position in the Treasury bond due November 15, 1998 with a market value of $30 million. The firm has partially financed the short position by borrowing $25 million of the bonds (market value). The borrowing arrangement will terminate on April 30, 1987. The firm would enter this short position and its financing on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in rows G and C (7.5–15 year and 4.5–9 month maturity categories for conventional securities), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
C 135 days–9 mn	+25			−90	+25	−90	+25	−65
G 7.5–15 yr. (5.5–9 yr.)				−30	0	−30	0	−30
					(1+3)	(2+4)		(5+6)
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions." The financing in category C is combined with the short position entered in category C in Example 3 to calculate the net immediate position of −$65 million.

Schedule C

Example (7). To calculate the net immediate position interim haircuts and the government's offset portion haircuts on the positions given in Examples 1 through 6, the offset portions and the net immediate positions are carried to Schedule C and entered in columns 7 and 8 in their respective maturity categories. The government's offset portion haircuts are determined by taking the percentage of the government's offset portions given by the corresponding government's offset portion factor. The government's offset portion haircut for maturity category C is $25 million x 0.08%=$0.02 million, or $20 thousand. The net immediate position interim haircuts are determined by taking the percentage of the net immediate positions indicated by the corresponding net immediate position factor. The net immediate position interim haricut for maturity category C is −$65 million × 0.20% = −$0.13 million, or −$130 thousand. The completed Schedule C, "Governments Portion and Net Immediate Position Interim Haircuts Calculation," read as follows:

SCHEDULE C.—GOVERNMENT'S OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION

[Dollar amounts in millions]

Maturity category	Government's offset portions			Net immediate positions		
	Amounts (+)	Factors (percent)	Haircuts (+)	Amounts (+/−)	Factors (percent)	Interim haircuts (+/−)
A 0–44 days	0	None	0.0000	−100	None	0.0000
B 45–134 days	0	0.05	0.0000	+150	0.12	+$0.1800
C 135 days-9 mn	$25	0.08	$0.0200	−65	0.20	−0.1300
D 9–18 mn	50	0.20	0.1000	0	0.45	0.0000
E 1.5–3.5 yr. (1.5–3 yr.)	0	0.50	0.0000	+15	1.10	+0.1650
F 3.5–7.5 yr. (3–5.5 yr.)	20	0.45	0.0900	−10	2.20	−0.2200
G 7.5–15 yr. (5.5–9 yr.)	0	0.90	0.0000	−30	3.30	−0.9900
H 15–30 yr. (9–12 yr.)	0	1.55	0.0000	+50	5.00	+2.5000
I (12–21 yr.)	0	1.50	0.0000	−45	7.75	−3.4875
J (over 21 yr.)	0	2.10	0.0000	0	11.25	0.0000

SCHEDULE C.—GOVERNMENT'S OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION—Continued

[Dollar amounts in millions]

Maturity category	Government's offset portions			Net immediate positions		
	Amounts (+)	Factors (percent)	Haircuts (+)	Amounts (+/−)	Factors (percent)	Interim haircuts (+/−)
MB mortgage-backed security	0	0.90	0.0000	+30	3.30	+0.9900
AR adjustable rate mortgage-backed security	0	0.50	0.0000	−20	1.10	−0.2200
Total Government's offset portion haircut			0.2100			
Column No	7	9	10	8	11	12

Schedule D

Example (8). On October 31, 1986 firm A's proprietary position contains, in addition to the immediate positions given in Examples 1 through 6, a short position in forward contracts in GNMA I mortgage-backed securities with a market value of $5 million. The forward contracts mature January 15, 1987. The gross futures and forward interim haircut would be calculated by taking the negative of 3.30% (the net position haircut factor for mortgage-backed securities) of the market value of the position, $5 million × 3.30% = $0.1650 million, or −$165 thousand. This haircut is then entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in the row marked MB (the category for mortgage-backed securities), as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[Dollar amounts in millions]

Maturity category	Net immediate position interim haircuts (+/−)	Gross interim haircuts				Aggregate interim haircuts		Futures and options offset portions (+)	Residual position interim haircuts (+/−)
		Futures and forward		Options					
		(+)	(−)	(+)	(−)	(+)	(−)		
MB mortgage backed securities	+$990.0		−$165.0			$990.0	−$165.0	$165.0	+$825.0
Column No	12	13	14	15	16	17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category MB, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category MB. The futures and options offset portion (column 19) is the smaller of the absolute values and the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (9). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 8, a long position of 25 futures contracts on Treasury bills with a closing price of 94.88. The futures contracts mature in March 1987. The market value of the 25 contracts is $24.68 million. The gross futures and forward interim haircut is calculated by taking 0.12% (the net position haircut factor for maturity category B, 45–135 days) of the market value of the position, $24.68 million × 0.12% = $.0296 million, or $29.6 thousand. Since the sum of the remaining time to maturity of the futures contract and the maturity of the underlying security is about 7.5 months, this haircut is entered in row C (4.5–9 month maturity category for conventional securities) of Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[Dollar amounts in millions]

Maturity category	Net immediate position interim haircuts (+/−)	Gross interim haircuts				Aggregate interim haircuts		Futures and options offset portions (+)	Residual position interim haircuts (+/−)
		Futures and forward		Options					
		(+)	(−)	(+)	(−)	(+)	(−)		
C 135 days-9 mn	−$130.0	+$29.6				+$29.6	−$139.0	$29.6	−$100.4
Column N.	12	13	14	15	16	17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category C, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category C. The futures and options offset portion (column 19) is the smaller of the absolute values and the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (10). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 9, 25 purchased put option contracts on Treasury bill futures. The options expire in March 1987 and have an exercise price of 94.75. The closing premium on these options for October 31 is $0.19. The interim haircut on a purchased put is the lesser of the market value of the option contracts or the gross futures and forward interim haircut on the underlying bill futures contracts. The market value of the option contracts is found by multiplying the premium per $100 par value times the total par value of the underlying futures contracts, ($0.19/$100) × $25 million = $0.475 million, or $47.5 thousand. The gross futures and forward interim haircut on the underlying futures contract was calculated in Example 9 to be $29.6 thousand. The interim haircut on these purchased puts is equal to the negative of the lesser of these two values, −$29.6 thousand. This haircut is entered as follows on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in row C (4.5–9 month maturity category for conventional securities) as were the underlying bill futures contracts:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

Maturity category	Net immediate position interim haircuts	Gross interim haircuts				Aggregate interim haircuts		Futures options offset portions	Residual position interim haircuts
		Futures & forward		Options					
	(+/−)	(+)	(−)	(+)	(−)	(+)	(−)	(+)	(+/−)
C 135 days–9 mn	−130.0	+29.6			−29.6	+29.6	−159.6	29.6	−130.0
Column No.	12	13	14	15	16	17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category C, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircut in category C. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (11). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 10, 40 purchased call option contracts on Treasury bonds due May 2016. The call options expire in December 1987 and have an exercise price of $94. The cash price of the bond is $95.78125. The closing premium on these options for October 31 is $2.18 (in 64ths). The interim haircut on a purchased call is the lesser of the market value of the option contracts or the net immediate position interim haircut on the underlying bonds. The market value of the option contracts is found by multiplying the premium per $100 par value of the bond times the total par value of the underlying bonds ($2.28125/$100) × $4 million = $0.09125 million, or $91.250 thousand. The net immediate position interim haircut on the underlying bonds is found by taking 5.00% (the net position haircut factor for maturity category H, 15–30 years for conventional securities) of the market value of the position, 5.00% × 40 × $95.78125/$100 = $191.6 thousand. The interim haircut on these purchased calls is equal to the lesser of these two values, $91.3 thousand. This haircut is entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in row H (15–30 year maturity category for conventional securities), as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

Maturity category	Net immediate position interim haircuts (+/−)	Gross interim haircuts				Aggregate interim haircuts		Futures & options offset portions (+)	Residual position interim haircuts (+/−)
		Futures & forward		Options					
		(+)	(−)	(+)	(−)	(+)	(−)		
H 15-30 yr. (9-12 yr.)	+2,500.0			+91.3		+2,591.3	0.0	0.0	+2,591.3
Column No.	12	13	14	15	16	17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category H, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category H. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the resideual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (12). To calculate the total futures and options offset haircut, the futures and options offset haircut factor of 20 per cent is multiplied by the sum of all the futures and options offset portions, which have been entered in column 19. This calculation would be entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

Maturity category	Futures & options offset portions (+)	Residual position interim haircuts (+/−)
A 0-44 days	0.0	0.0
B 45-134 days	0.0	+180.0
C 135 days-9 mn	29.6	−130.0
D 9-18 mn	0.0	0.0
E 1.5-3.5 yr. (1.5-3 yr.)	0.0	+165.0
F 3.5-7.5 yr. (3-5.5 yr.)	0.0	−220.0
G 7.5-15 yr (5.5-9 yr.)	0.0	−990.0
H 15-30 yr. (9-12 yr.)	0.0	+2,591.3
I (12-21 yr.)	0.0	−3,487.5
J (over 21 yr.)	0.0	0.0
MB mortgage-backed security	165.0	+825.0

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS—Continued

[In thousands of dollars]

Maturity category	Futures & options offset portions (+)	Residual position interim haircuts (+/−)
AR adjustable rate mortgage-backed	0.0	−220.0
Total futures and options offset portion	194.6	
Factor (percent)	×20	
Total futures and options offset haircut	38.92	
Column No.	19	20

Schedule E

Example (13). [i] Schedule E is used to calculate the hedging disallowance haircuts, the net residual position interim haircuts, the total hedging disallowance haircut, and the residual net position haircut. The residual position interim haircut for each category is carried forward from Schedule D, column 20 to Schedule E, column 20. For firm A's positions given in Examples 1 through 11, categories E and F, with residual position interim haircuts of +$165.0 thousand and −$220.0 thousand, are first offset, leaving a net residual position interim haircut of −$55.0 thousand (+$165.0 thousand + −$220.0 thousand) in category F and a hedging disallowance haircut of $33.0 thousand in category E (20% × $165.0 thousand = $33.0 thousand). The second offset is between categories G and H, with residual position interim haircuts of −$990.0 thousand and +$2,591.3 thousand, leaving a net residual position interim haircut of +$1,601.3 thousand in category H and a hedging disallowance haircut of $198 thousand in category G. The result of these calculations would be recorded in rows E. F, G, and H of the 20 per cent disallowance category of Schedule E, "Calculation of Hedging Disallowance Haircuts When Netting Haircuts Across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance	
		Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
E 1.5-3.5 yr. (1.5-3 yr.)	+165.0	33.0	0.0
F 3.5-7.5 yr. (3-5.5 yr. (3-5.5 yr.)	−220.0	0.0	−55.0
G 7.5-15 yr. (5.9-9 yr.)	−990.0	198.0	0.0
H 15-30 yr. (9-12 yr.)	+2,591.3	0.0	+1,601.3
Column No.	20	21	22

[ii] With completion of offsetting of category pairs between which 20% hedging disallowance is permitted, categories between which 30% hedging disallowance is permitted are offset. Of the permissible category pairings at the 30% disallowance level, only categories B and C contain residual position interim haircuts or net residual position interim haricuts which can be offset. Category B's residual interim position haircut of +$180 thousand is offset against category C's residual position interim haircut of −$130 thousand, leaving a net residual position interim haircut of +$50 thousand in category B and a hedging disallowance haircut of $39 thousand in category C. The results of this calculation would be shown in rows B and C of Schedule E, "Calculation of Hedging Disallowance Haircuts when Netting Haircuts across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance	
		Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
B 45-134 days	+180.0	0.0	+50.0
C 135 days-9 mn	−130.0	39.0	0.0

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES—Continued

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance	
		Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
Column No.....	20	23	24

[iii] Of the permissible category pairings at the 40% disallowance level, categories F and MB contain residual position interim haricuts or net residual position interim haircuts which can be offset. Category F's net residual interim position haircut of −$55 thousand is offset against category MB's residual position interim haircut of +$825 thousand, leaving a net residual position interim haircut of +$770 thousand in category MB and a hedging disallowance haircut of $22 thousand in category F. The second offset at the 40% level is between categories H and I, where the net residual position interim haircut of +$1,601.3 thousand in category H is offset against the residual position interim haircut of −$3,487.5 thousand in category I, leaving a net residual position interim haircut of −$1,886.2 thousand in category I and a hedging disallowance haircut of $640.5 thousand in category H. The results of these calculations would be shown in rows F, H, I, and MB of Schedule E, "Calculation of Hedging Disallowance Haircuts When Netting Haircuts Across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance—Net Position Interim Haircuts (+/−)	40% disallowance	
			Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
F 3.5-7.5 yr. (3-5.5 yrs.)	−220.0	−55.0	22.0	0.0
H 15-30 yr. (9-12 yr.)	+2,591.3	+1,601.3	640.5	0.0
I (12-21 yr.)	−3,487.5	0.0	0.0	−1,886.2
MB mortgage backed security	+825.0	0.0	0.0	+770.0
Column No.	20	22	25	26

[iv] Calculation of the total hedging disallowance haircut and the residual net position haircut is shown in Schedule E in the last two columns, "Hedging Disallowance Haircuts" and "Qualified Netting Interim Haircuts," where the hedging disallowance haircut and the qualified netting interim haircut for each category are entered as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Hedging disallowance haircuts	Qualified netting interim haircuts
	(+)	(+)
A 0-44 days	0.0	0.0
B 45-134 days	0.0	50.0
C 135 days-9 mn	39.0	0.0

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES—Continued

[In thousands of dollars]

Maturity category	Hedging disallowance haircuts	Qualified netting interim haircuts
	(+)	(+)
D 9-18 mn	0.0	0.0
E 1.5-3.5 yr (1.5-3 yr.)	33.0	0.0
F 3.5-7.5 yr (3-5.5 yr.)	22.0	0.0
G 7.5-15 yr (5.5-9 yr.)	198.0	0.0
H 15-30 yr (9-12 yr.)	640.5	0.0
I (12-21 yr.)	0.0	1,886.2
J (over 21 yr.)	0.0	0.0
MB mortgage-backed security	0.0	770.0

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES—Continued

[In thousands of dollars]

Maturity category	Hedging disallowance haircuts	Qualified netting interim haircuts
	(+)	(+)
AR adjustable rate mortgage-backed	0.0	220.0
Total hedging disallowance haircut	932.5	
Residual net position haircut		2,926.2
Column No	27	28

Schedule A

Example (14). On Schedule A, haircuts from Schedules C through E and liquid capital are entered, and the capital-to-risk ratio is calculated. On October 31, 1986, Firm A has total ownership equity of $10,185.8 thousand and subordinated liabilities of $2,000.0 thousand, of which $800.3 thousand are non-allowable, or illiquid, assets. These amounts with various deductions and credits give firm A liquid capital of $11,335.7 thousand. With one of its customers, who is not firm A's principal clearing bank or clearing broker, firm A has a net credit exposure of $1,780.4 thousand. This is in excess of 15 percent of firm A's liquid capital of $11,335.7 thousand, so a concentration of credit haircut of $20 thousand is found by multiplying the excess, $80 thousand, by 25 percent. A credit volatility haircut of $225 thousand is found by multiplying the larger of the qualifying long or short money market positions, $150 million, by 0.15 percent. Since the $40 million commercial paper position is rated in one of the four highest rating categories by two nationally recognized statistical rating organizations, it has a haircut of 2% x $40 million = $800 thousand according to SEC Rule 15c3-1. The haircuts and the elements making up liquid capital are entered on Schedule A, "Liquid Capital Requirement Summary Computation," as follows:

SCHEDULE A.—LIQUID CAPITAL REQUIREMENT SUMMARY COMPUTATION

[In thousands of dollars]

1. Liquid capital [1]	11,335.7
2. Haircuts on security and financing positions including contractual commitments:	
a. Total governments offset portion haircut (Schedule C)	210.0
b. Total futures and options offset haircut (Schedule D)	38.9
c. Total hedging disallowance haircut (Schedule E)	932.5
d. Residual net position haircut (Schedule E)	2,926.2
e. Other securities haircut (use SEC factors)	800.0
3. Haircuts on credit exposure:	
a. Concentration of credit haircut	20.0
b. Credit volatility haircut	225.0
4. Total haircuts (lines 2+3)	5,152.6
5. Capital-to-risk ratio (line 1/line 4)	2.2:1

[1] Identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G–405.

A completed set of the remaining schedules, using firm A's positions from the examples above, follows.

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Schedule B

Calculation of Net Immediate Positions in Securities and Financings
($ millions)

	Maturity Category 1/	Financings Long 2/ (+)	Financings Short 2/ (-)	Securities Positions Long (+)	Securities Positions Short (-)	Total Securities and Financing Positions (+)	Total Securities and Financing Positions (-)	Offset Portions (+)	Net Immediate Positions (+/-)	
A	0-44 days				-100	0	-100	0	-100	A
B	45-134 days			+150		+150	0	0	+150	B
C	135 days-9 months	+25			-90	+25	-90	+25	-65	C
D	9-18 months		-50	+50		+50	-50	+50	0	D
E	1.5-3.5 years (1.5-3 years)			+15		+15	0	0	+15	E
F	3.5-7.5 years (3-5.5 years)			+20	-30	+20	-30	+20	-10	F
G	7.5-15 years (5.5-9 years)				-30	0	-30	0	-30	G
H	15-30 years (9-12 years)			+50		+50	0	0	+50	H
I	(12-21 years)				-45	0	-45	0	-45	I
J	(21 years and over)									J
MB	mortgage-backed			+30		+30	0	0	+30	MB
AR	adjustable rate mortgage-backed				-20	0	-20	0	-20	AR
	Column Number	1	2	3	4	5 (1+3)	6 (2+4)	7# (Note 1)	8# (5+6)	

Carry forward to Schedule C.

Note 1: The offset portion (Column 7) is the smaller of Columns 5 and 6.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in that category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

2/ Long financings are financings which provide securities to a broker or dealer; short financings are those which provide funds.

Schedule C

Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation
($ millions)

	Maturity Category 1/	Governments Offset Portion			Net Immediate Positions		
		$ Amounts (+)	Factors	Haircuts (+)	$ Amounts (+/-)	Factors	Interim Haircuts (+/-)
A	0-44 days	0	None	0.0000	-100	None	0.0000
B	45-134 days	0	0.0005	0.0000	+150	0.0012	+0.1800
C	135 days-9 months	25	0.0008	0.0200	-65	0.0020	-0.1300
D	9-18 months	50	0.0020	0.1000	0	0.0045	0.0000
E	1.5-3.5 years (1.5-3 years)	0	0.0050	0.0000	+15	0.0110	+0.1650
F	3.5-7.5 years (3-5.5 years)	20	0.0045	0.0900	-10	0.0220	-0.2200
G	7.5-15 years (5.5-9 years)	0	0.0090	0.0000	-30	0.0330	-0.9900
H	15-30 years (9-12 years)	0	0.0155	0.0000	+50	0.0500	+2.5000
I	(12-21 years)	0	0.0150	0.0000	-45	0.0775	-3.4875
J	(21 years and over)	0	0.0210	0.0000	0	0.1125	0.0000
MB	mortgage-backed	0	0.0090	0.0000	+30	0.0330	+0.9900
AR	adjustable rate mortgage-backed	0	0.0050	0.0000	-20	0.0110	-0.2200
	Total Governments Offset Portion Haircut			$ 0.2100			
	Column Number	7 (Note 1)	9	10# (7x9)	8 (Note 1)	11	12## (8x11)

\# Carry to Schedule A, line 2a
\## Carry forward to Schedule D (or Schedule E, if no forwards, futures, or options).
Note 1: From Schedule B.
1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

Schedule D

Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts

($ thousands)

	Maturity Category 1/	Net Immediate Position Interim Haircuts (+/-)	Gross Interim Haircuts: Futures & Forward (+)	Futures & Forward (-)	Options (+)	Options (-)	Aggregate Interim Haircuts (+)	Aggregate Interim Haircuts (-)	Futures & Options Offset Portions 2/ (+)	Residual Position Interim Haircuts (+/-)	
B	45-134 days	+180.0								+180.0	B
C	135 days-9 months	-130.0	+29.6			-29.6	+29.6	-159.6	29.6	-130.0	C
D	9-18 months	0.0								0.0	D
E	1.5-3.5 years (1.5-3 years)	+165.0								+165.0	E
F	3.5-7.5 years (3-5.5 years)	-220.0								-220.0	F
G	7.5-15 years (5.5-9 years)	-990.0								-990.0	G
H	15-30 years (9-12 years)	+2500.0			+91.3		+2591.3	0.0	0.0	+2,591.3	H
I	(12-21 years)	-3487.5								-3,487.5	I
J	(21 years and over)	0.0								0.0	J
MB	mortgage-backed	+990.0		-165.0			990.0	-165.0	165.0	+825.0	MB
AR	adjustable rate mortgage-backed	-220.0								-220.0	AR
	Column Number	12 (Note 1)	13	14	15	16	17	18	19 (Note 2)	20##	

Total Futures and Options Offset Portion: $ 194.6

Factor: x20%

Total Futures and Options Offset Haircut: $ 38.92 #

\# Carry to Schedule A, line 2b.

Carry forward to Schedule E.

Note 1: From Schedule C.

Note 2: Column 19 is the smaller of columns 17 and 18.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year is always considered to be 6 months.

2/ The total futures and options haircut is calculated from the total of column 19.

Schedule E

Calculation of Hedging Disallowance Haircuts when Netting Haircuts Across Categories 1/
($ thousands)

	Maturity Category 2/	Residual Position Interim Haircuts (+/-)	20% Disallowance: Hedging Disallowance Haircuts (+)	20% Disallowance: Net Residual Position Interim Haircuts (+/-)	30% Disallowance: Hedging Disallowance Haircuts (+)	30% Disallowance: Net Residual Position Interim Haircuts (+/-)	40% Disallowance: Hedging Disallowance Haircuts (+)	40% Disallowance: Net Residual Position Interim Haircuts (+/-)	Hedging Disallowance Haircuts (+)	Qualified Netting Interim Haircuts (+)	
B	45-134 days	+180.0			0.0	+50.0			0.0	50.0	B
C	135 days-9 months	-130.0			39.0	0.0			39.0	0.0	C
D	9-18 months	0.0							0.0	0.0	D
E	1.5-3.5 years (1.5-3 years)	+165.0	33.0	0.0					33.0	0.0	E
F	3.5-7.5 years (3-5.5 years)	-220.0	0.0	-55.0			22.0	0.0	22.0	0.0	F
G	7.5-15 years (5.5-9 years)	-990.0	198.0	0.0					198.0	0.0	G
H	15-30 years (9-12 years)	+2,591.3	0.0	+1,601.3			640.5	0.0	640.5	0.0	H
I	(12-21 years)	-3,487.5					0.0	-1,886.2	0.0	1,886.2	I
J	(21 years and over)	0.0							0.0	0.0	J
MB	mortgage-backed	+825.0					0.0	+770.0	0.0	770.0	MB
AR	adjustable rate mortgage-backed	-220.0							0.0	220.0	AR
								Total Hedging Disallowance Haircut:	$ 932.5		
								Residual Net Position Haircut:		$ 2,926.2	
	Column Number	20 (Note 1)	21	22 (Note 2)	23	24 (Note 2)	25	26 (Note 2)	27# (Note 3)	28##	

\# Column 27 carries forward to Schedule A, line 2c.

\## Column 28 total carries forward to Schedule A, line 2d.

Note 1: From Schedule D (or Schedule C, if no forwards, futures, or options).

Note 2: Net of two offsetting haircuts of paired maturity categories.

Note 3: For every entry in column 20 there should be an entry in either column 27 or 28 (but never both).

1/ See Sec 402.2(f)(3) for category pair hedging disallowance haircut factors.

2/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

BILLING CODE 4810-25-C

List of subjects in 17 CFR Chapter IV

Accounting, Accountants, Banks, banking, Brokers, Credit unions, Dealers, Federal home loan banks, Government securities, Government securities brokers and dealers, Investments, National banks, Savings and loan associations, Securities.

For the reasons set out in the preamble, Chapter IV of Title 17, *Code of Federal Regulations*, is proposed to be added as set forth below.

CHAPTER IV—REGULATIONS UNDER THE GOVERNMENT SECURITIES ACT OF 1986

SUBCHAPTER A—REGULATIONS UNDER SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

Part
400—Rules of General Application
401—Exemptions
402—Financial Responsibility
403—Protection of Customer Securities and Balances
404—Recordkeeping and Preservation of Records
405—Reports and Audit
449—Forms, Section 15c of the Securities Exchange Act of 1934

SUBCHAPTER B—REGULATIONS UNDER TITLE II OF THE GOVERNMENT SECURITIES ACT OF 1986

Part
450—Custodial Holdings of Government Securities by Depository Institutions

SUBCHAPTER A—REGULATIONS UNDER SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

PART 400—RULES OF GENERAL APPLICATION

Sec.
400.1 Scope of regulations.
400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations, and of other materials.
400.3 Definitions.
400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.
400.5 Amendments to application for registration and to notice of status as a government securities broker or dealer.
400.6 Notice of withdrawal from business as a government securities broker or dealer by a financial institution.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5).

§ 400.1 Scope of regulations.

(a) Title I of the Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat. 3208) amends the Securities Exchange Act of 1934 (48 Stat. 881–905; 15 U.S.C. chapter 2B) ("Act") by adding section 15C, authorizing the Secretary of the Treasury to promulgate regulations concerning the finanical responsibility, protection of customer securities and balances, recordkeeping and reporting of brokers and dealers in government securities. Those regulations constitute subchapter A of this chapter. Unless otherwise explicitly provided, all regulations in this subchapter apply to all government securities brokers or dealers, including registered brokers or dealers and financial institutions.

(b) Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) requires all government securities brokers and government securities dealers, except those who are brokers or dealers registered pursuant to section 15 or section 15B of the Act or financial institutions, to register with the Securities and Exchange Commissiion ("Commission"). Regulations concerning registration are at § 240.15Ca2–1 et seq. of this title. The Commission is responsible for the interpretation of the definitions of government securities broker and government securities dealer and of the regulations at § 240.15Ca2–1 et seq.

(c) Section 15C(a)(1)(B)(i) of the Act (15 U.S.C. 78o–5(a)(1)(B)(i)) requires all government securities brokers or dealers that are also registered brokers or dealers to notify the Commission of their status as government securities brokers or dealers. Regulations concerning notice are at § 240.15Ca1–1 of this title.

(d) Section 15C(a)(1)(B)(i) of the Act also requires all government securities brokers or dealers that are financial institutions to notify the appropriate regulatory agency, as defined in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), of their status as government securities brokers or dealers. The form of notice, Form G–FIN, is at § 449.1 of this chapter. Forms are available from the appropriate regulatory agency.

§ 400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.

(a) The regulations in this chapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Deputy Assistant Secretary (Federal Finance).

(b)(1) Section 15C(a)(4) of the Act (15 U.S.C. 78o–5(a)(4)) authorizes the Secretary to exempt any government securities broker or dealer or class thereof from the requirements of registration or regulations promulgated under section 15C. In addition, section 15C(b)(3) of the Act (15 U.S.C. 78o5(b)(3)) provides for classification, by the Secretary, of government securities brokers or dealers and authorizes the whole or partial exemption of classes from rules under section 15C or the application of different standards to different classes.

(2) Although the appropriate regulatory agencies, as defined in § 400.3, and the self-regulatory organizations, as defined in section 3(a)(26) of the Act (15 U.S.C. 78c(a)(26)), have enforcement responsibility under section 15C of the Act, Treasury is responsible for interpretation and amendment of the regulations under this chapter (with the exception of Forms G–FIN and G–FINW, §§ 449.1 and 449.2 of this chapter, which are the responsibility of the Board of Governors of the Federal Reserve System).

(c) Correspondence with the Treasury concerning the regulations, including any request for exemption, should be directed to the Deputy Assistant Secretary (Federal Finance), Department of the Treasury, Main Treasury Building, Washington, D.C. 20220. Both the envelope and the document should prominently state "Government Securities Act Request". Three copies should be provided of lengthy documents and exhibits.

§ 400.3 Definitions.

Unless otherwise explicitly provided, in this subchapter:

(a) "Act" means the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. chapter 2B, as amended):

(b) "Appropriate regulatory agency" has the meaning set out in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for an entity insured by the Federal Savings and Loan Insurance Corporation is in all cases the Federal Home Loan Bank Board, and, with respect to a financial institution for which an appropriate regulatory agency is not explicitly designated, the appropriate regulatory agency is the SEC;

(c) "Commission" or "SEC" means the Securities and Exchange Commission;

(d) "Designated examining authority" and "Examining Authority" means: (1) In the case of a registered government securities broker or dealer that belongs to only one self-regulatory organization, such self-regulatory organization, and (2) in the case of a registered government securities broker or dealer that belongs to more than one self-regulatory organization, the self-regulatory organization designated by the Commission pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) as the entity with responsibility for examining such registered government securities broker or dealer;

(e) "Financial institution" has the meaning set out in section 3(a)(46) of the Act (15 U.S.C. 78c(a)(46)), and such term explicitly does not include a subsidiary or affiliate of an institution described in such section;

(f) "Government securities broker" has the meaning set out in section 3(a)(43) of the Act (15 U.S.C. 78c(a)(43)), and explicitly includes not only registered government securities brokers, but also registered brokers and financial institutions;

(g) "Government securities dealer" has the meaning set out in section 3(a)(44) of the Act (15 U.S.C. 78c(a)(44)), and explicitly includes not only registered government securities dealers, but also registered dealers and financial institutions;

(h) "Government securities" has the meaning set out in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42));

(i) "Registered broker or dealer" means a broker or dealer registered pursuant to section 15 or section 15B of the Act (15 U.S.C. 78o, 78o–4));

(j) "Registered government securities broker or dealer" means a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A));

(k) "Secretary" means the Secretary of the Treasury; and

(l) "Treasury" or "Department" means the Department of the Treasury.

§ 400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.

(a) Every associated person of a financial institution that is a government securities broker or dealer that is not exempt pursuant to Part 401 of this chapter shall file with such financial institution a completed Form G–FIN–4 (§ 449.4 of this chapter) unless such person has on file with such financial institution a completed and current Form U–4 (promulgated by a self-regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers).

(b) To the extent any information furnished by an associated person pursuant to paragraph (a) of this section (including information on a Form U–4 or Form MSD–4) is or becomes materially inaccurate or incomplete, such associated person shall promptly furnish in writing to such financial institution, in a form acceptable to the appropriate regulatory agency for such financial institution, a statement correcting such information.

(c) For the purpose of verifying the information furnished by an associated person pursuant to paragraph (a) of this rule, every government securities broker or dealer that is a financial institution shall make inquiry of all other employers of such associated person during the immediately preceding three years concerning the accuracy and completeness of such information.

(d) Every government securities broker or dealer that is a financial institution not exempt from this section pursuant to Part 401 of this chapter shall:

(1) Obtain and, within 10 days thereafter, file with the appropriate regulatory agency, in a form acceptable to such appropriate regulatory agency, the information required by paragraphs (a) and (b) of this section; and

(2) File with the appropriate regulatory agency within 30 days after the termination of the status of an individual as an associated person a Form G–FIN–5 (§ 449.4 of this chapter), unless the financial institution is required to and has filed a Form U–5 or Form MSD–5 with respect to such person.

(e)(1) For the purposes of this part, "associated person" means a person:

(i) Directly engaged in any of the following activities in either a supervisory or non-supervisory capacity:

(A) Underwriting, trading or sales of government securities;

(B) Financial advisory or consultant services for issuers in connection with the issuance of government securities;

(C) Research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in paragraphs (e)(1)i(A) and (e)(1)i(B) of this section;

(D) Activities other than those specifically mentioned which involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in paragraphs (e)(1)(A) and (e)(1)(B) of this section; or

(ii) Directly engaged in the following activities in a supervisory capacity:

(A) Processing and clearance activities with respect to government securities;

(B) Maintenance of records involving any of the activities described in this paragraph (e)(1).

(2) Directors and senior officers of the financial institution who may from time to time set broad policy guidelines affecting the financial institution as a whole that are not directly related to the conduct of the financial institution's government securities business are not considered to be "directly engaged" in the activities described in this paragraph (e).

(f) Every notice and form filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

§ 400.5 Amendments to application for registration and to notice of status as a government securities broker or dealer.

(a) (1) If the information contained in any application for registration as a government securities broker or dealer (other than the statements required by § 250.15Ca2–2 of this title) or in any amendment thereto, becomes inaccurate for any reason, the registered government securities broker or dealer shall file within 30 days thereafter an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(2) If the information contained in any notice of status as a government securities broker or dealer filed by a registered broker or dealer, or in any amendment thereto, becomes inaccurate for any reason, the registered broker or dealer shall file within 30 days an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(b) If the information contained in any notice of status as a government securities broker or dealer filed by a financial institution, or any amendment thereto, becomes inaccurate for any reason, the financial institution shall file within 30 days an amendment on Form G–FIN (§ 449.1 of this chapter) correcting such information, in accordance with the instructions provided therein.

(c) Every amendment filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

§ 400.6 Notice of withdrawal from business as a government securities broker or dealer by a financial institution.

(a) Whenever a financial institution that is a government securities broker or dealer that is not exempt from the notice requirements of § 400.5 pursuant to Part 401 of this chapter, ceases to act as a government securities broker or dealer, it shall file with the appropriate regulatory agency notice of such cessation on Form G–FINW (§ 449.2 of this chapter) in accordance with the instructions contained therein.

(b) Except as provided in paragraph (c) of this section, a notice that a financial institution has ceased to act as a government securities broker or dealer shall become effective for all purposes

on the 60th day after the filing thereof with the appropriate regulatory agency or within such shorter period of time as the appropriate regulatory agency determines.

(c) If the notice described in paragraph (a) of this section is filed with the appropriate regulatory agency any time after the date of the issuance of a notice or order by the appropriate regulatory agency instituting proceedings pursuant to section 15C(c)(2)(A) of the Act (15 U.S.C. § 78o–5(c)(2)(A)) to censure, suspend, limit, or bar from acting as a government securities broker or government securities dealer the entity filing such notice, or if the appropriate regulatory agency has instituted any action against the entity filing such notice pursuant to section 15C(2)(B) of the Act (15 U.S.C. § 78o–5(c)(2)(B)), the notice shall become effective pursuant to paragraph (b) of this section at such time and upon such terms and conditions as the appropriate regulatory agency deems necessary to appropriate in the public interest for the protection of investors.

(d) Every notice filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

PART 401—EXEMPTIONS

Sec.

401.1 Exemption for organizations handling transactions in United States Savings Bonds.
401.2 Exemption for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.
401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.
401.4 Exemption for financial institutions whose government securities dealer activities consist only of repurchase and limited reverse repurchase transactions.
401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(a)(4)).

§ 401.1 Exemption for organizations handling transactions in United States Savings Bonds.

An organization that handles United States Savings Bond transactions, including a qualified issuing or paying agent or an organization that accommodates customers or employees by forwarding requested transactions to qualified issuing or paying agents or the Treasury and whose transactions in government securities are limited to these transactions and such other activities that are exempted by the regulations under this subchapter, shall be exempt from the provisions of section 15C(a), (b) and (d) of the Act (15 U.S.C. 78o–5(a), (b), (d)) and the regulatios of this subchapter. For the purposes of this section, the term "United States Savings Bond" means any savings-type security offered by the Treasury, including all series of the United States Savings Bonds, United States Savings Notes and United States Savings Stamps.

§ 401.2 Exemption for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.

(a) Subject to the requirements of paragraph (b) of this section, a depository institution that submits tenders or subscriptions for purchase on original issue of United States Treasury securities for the account of customers on a fully disclosed basis, whose transactions in government securities are limited to such transactions and such other activities as have been exempted by regulation under this subchapter shall be exempt from the provisions of section 15C(a), (b) and (d) of the Act (15 U.S.C. 78o–5(a), (b), (d)) and the regulations of this subchapter.

(b) The exemption described in paragraph (a) of this section is available only to a depository institution that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of goverment securities.

(c) For the purposes of this section, "depository institution" has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607).

§ 401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.

(a)(1) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of Sections 15C(a), (b) and (d) of the Act (15 U.S.C. 78o–5(a), (b), (d)) and the regulations of this subchapter, unless it acts as a government securities broker by:

(i) Holding itself out as a government securities broker or interdealer broker; or

(ii) Actively soliciting purchases or sales of government securities on an agency basis;

(2) A financial institution shall not be regarded as acting as a government securities broker within the meaning of this section if it:

(i) Effects fewer than 500 government securities brokerage transactions (other than transactions described in §§ 401.1 or 401.2) per year; or

(ii) Effects all such transactions (other than transactions described in §§ 401.1 or 401.2) pursuant to a contractual or other arrangement with a government securities broker or dealer that is registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) (the "transacting government securities broker or dealer") under which the transacting government securities broker or dealer will offer securities services on or off the premises of the financial institution, provided that:

(A) The transacting government securities broker or dealer is clearly identified as the person performing the securities services;

(B) Financial institution employees perform only clerical and ministerial functions in connection with government securities transactions unless such employees are associated persons (as defined in § 400.4(e) of this chapter) or registered representatives of the transacting government securities broker or dealer;

(C) Financial institution employees do not receive compensation for government securities activities other than clerical or ministerial functions unless such employees are associated persons (as defined in § 400.4(e) of this chapter) or registered representatives of the transacting government securities broker or dealer; and

(D) Such services are provided on a basis in which all customers are fully disclosed to the transacting government securities broker or dealer.

(b) The exemption described in paragraph (a) of this section is available only to a financial institution that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities for customers.

(c) For the purposes of this section, "financial institution" includes a federal credit union, as defined in 12 U.S.C. 1752(1).

§ 401.4 Exemption for financial institutions whose government securities dealer activities consist only of repurchase and limited reverse repurchase transactions.

(a) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of sections 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter if its government securities dealer activities are limited to:

(1) Sales or purchases in a fiduciary capacity;

(2) The sale and subsequent repurchase of government securities pursuant to a repurchase agreement;

(3) Not more than 500 transactions per year involving the purchase and subsequent resale of government securities pursuant to a reverse repurchase agreement;

(4) Such other activities as have been exempted by regulation under this subchapter.

(b) The exemption described in paragraph (a) of this section is available only to a financial institution that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities for customers.

§ 401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.

(a) (1) Subject to the requirements of paragraph (b) of this section, a corporate credit union shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations thereunder if its government securities dealer activities are limited to the sale and subsequent repurchase and the purchase and subsequent resale, each pursuant to a repurchase or reverse repurchase agreement, of government securities to other credit unions and such other activities as have been exempted by regulation under this Part.

(2) For the purposes of this section, "corporate credit union" means a credit union whose membership consists primarily of other credit unions and that is (i) a federal credit union as defined in 12 U.S.C. 1752(1), (ii) an insured credit union as defined in 12 U.S.C. 1752(7), or (iii) a member of the National Credit Union Administration Central Liquidity Facility.

(b) The exemption described in paragraph (a) of this section is available only to a credit union that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities.

PART 402—FINANCIAL RESPONSIBILITY

Sec.

402.1 Application of part to registered brokers and dealers and financial institutions; effective date.
402.2 Capital requirements for registered government securities brokers and dealers.
402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).
402.2b [Reserved]
402.2c Appendix C—Modification of § 240.15c3–1c of this title, relating to consolidated calculations of capital, for purposes of § 402.2.
402.2d Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(A), (b)(2)).

§ 402.1 Application of part to registered brokers and dealers and financial institutions; effective date.

(a) *Application of part.* This part applies to all government securities brokers and dealers, except as otherwise provided herein.

(b) *Registered brokers or dealers.* This part does not apply to a registered broker or dealer that is subject to § 240.15c3–1 of this title (SEC Rule 15c3–1).

(c) *Financial institutions.* This part does not apply to a government securities broker or dealer that is a financial institution and that is subject to the rules and regulations of its appropriate regulatory agency concerning capital requirements.

(d) *Government securities interdealer brokers.* (1) A government securities interdealer broker, as defined in paragraph (d)(2) of this section, may elect not to be subject to the limitations of this Part 402 but rather to be subject to the requirements of § 240.15c3–1 of this title (SEC Rule 15c3–1) except paragraph (c)(2)(ix) thereof, and paragraphs (d)(3), (4), and (5) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

(2) "Government securities interdealer broker" means a government securities broker which acts exclusively as an undisclosed agent in the purchase or sale of government securities for a registered broker or dealer or government securities broker or dealer not exempt pursuant to Part 401 of this chapter, which has no "customers" as defined in § 240.15c3–1 of this title and which does not have or maintain any government securities in its proprietary or other accounts.

(3) In order to qualify to operate under this paragraph (d), a government securities interdealer broker shall at all times have and maintain net capital, as defined in § 240.15c3–1(c)(2) of this title, of not less than $1,000,000.

(4) For purposes of this paragraph (d), a government securities interdealer broker shall deduct from net worth ¼ of 1% of the contract value of each government securities failed-to-deliver contract which is outstanding 5 business days on longer. Such deduction shall be increased by any excess of the contract price of the failed-to-deliver over the market value of the underlying security.

(5) For purposes of this paragraph (d), a government securities interdealer broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by government securities outstanding for not more than one business day and offset by government securities failed to deliver of the same issue and quantity. In no event may a government securities interdealer broker exclude any overnight bank loan attributable to the same government securities failed-to-deliver contract for more than one business day. A government securities interdealer broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by § 240.15c3–1(c)(2)(iv)(E) of this title.

(6) On the application of the government securities interdealer broker, the designated examining authority may extend the periods of time in this paragraph (d) if it determines that the extension is warranted because of exceptional circumstances and that the government securities interdealer broker is acting in good faith.

(e) The Department may, upon written application, exempt from the provisions of this part, either unconditionally or on specified terms and conditions, any registered government securities broker or dealer who satisfies the Department that, because of the special nature of its

business, its financial position, and the safeguards it has established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject such government securities broker or dealer to the provisions of this part.

(f) *Effective Date.* This part shall be effective July 25, 1987, *provided however,* that until October 25, 1987, registered government securities brokers and dealers need not comply with § 402.2(a)–(c) as long as:

(1) A registered government securities broker or dealer that acts solely as an introducing broker within the meaning of § 240.15c3–1(a)(2) of this title has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than $5,000; and

(2) Any other registered government securities broker or dealer has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than $50,000.

§ 402.2 Capital requirements for registered government securities brokers and dealers.

(a) *General rule.* No government securities broker or dealer shall permit its liquid capital to be below an amount equal to 120 percent of total haircuts as defined in paragraph (g) of this section.

(b) *Minimum liquid capital.* Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer shall have and maintain liquid capital in an amount not less than $25,000, after deducting total haircuts as defined in paragraph (g) of this section.

(c) *Minimum liquid capital for introducing brokers.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, a government securities broker or dealer that acts solely as an introducing broker within the meaning of § 240.15c3–1(a)(2) of this title, shall maintain liquid capital in an amount not less than $5,000, after deducting total haircuts as defined in paragraph (g) of this section.

(d) *Liquid capital.* "Liquid capital" means net capital as defined in § 240.15c3–1)c)(2) of this title with the following modifications:

(1) The percentages used to calculate the deductions for failed to deliver contracts when the underlying instrument is a Treasury market risk instrument as defined in paragraph (e) of this section are the appropriate haircut factors specified in paragraph (f)(2) of this section; and

(2) The deductions from net worth required by §§ 240.15c3–1(c)(2)(vi) and (c)(2)(viii) of this title and the adjustments to net worth set forth in § 240.15c3–1a and § 240.15c3–1b of this title (Appendices A and B to SEC Rule 15c3–1) are omitted.

(e) *Treasury market risk instruments.* (1) For purposes of this part, the term "Treasury market risk instrument" means the following dollar-denominated securities, debt instruments, and derivative instruments:

(i) Government securities, except equity securities and those mortgage-backed securities described in paragraph (e)(2) of this section;

(ii) Zero-coupon receipts or certificates based on marketable Treasury notes or bonds;

(iii) Certificates of deposit of less than one year to maturity;

(iv) Bankers acceptances;

(v) Commercial paper of less than one year to maturity rated in one of the three highest categories by at least two nationally recognized statistical rating organizations;

(vi) Futures, forwards, and options on Treasury market risk instruments described in paragraphs (e)(1)(i)–(v) of this section or on time deposits whose changes in yield are closely correlated with the Treasury market risk instruments described in paragraph (e)(1)(iii) of this section, settled on a cash or delivery basis;

(vii) Options on those futures contracts described in paragraph (e)(1)(vi) of this section, settled on a cash or delivery basis; and

(2) "Treasury market risk instrument" does not include mortgage-backed securities that do not pass through to each security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses.

(f)(1) *Haircut categories.* For purposes of this part, the applicable categories within which non-zero-coupon and zero-coupon Treasury market risk instruments are classified are:

Category	Term or type for non-zero-coupon instruments	Term for zero-coupon instruments
A	Less than 45 days	Less than 45 days.
B	At least 45 days but less than 135 days	At least 45 days but less than 135 days.
C	At least 135 days but less than 9 months	At least 135 days but less than 9 months
D	At least 9 months but less than 1 year, 6 months.	At least 9 months but less than 1 year, 6 months.
E	At least 1 year, 6 months but less than 3 years, 6 months.	At least 1 year, 6 months but less than 3 years.
F	At least 3 years, 6 months but less than 7 years, 6 months.	At least 3 years but less than 5 years, 6 months.
G	At least 7 years, 6 months but less than 15 years.	At least 5 years, 6 months but less than 9 years.
H	15 years and over	At least 9 years, but less than 12 years.
I		At least 12 years but less than 21 years.
J		21 years and over.
MB	All fixed rate mortgage-backed securities that are Treasury market risk instruments.	
AR	All adjustable rate mortgage-backed securities that are Treasury market risk instruments.	

(2) *Haircut factors.* For purposes of this part, the applicable net position and offset haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

Category	Haircut factors	
	Net position haircuts (percent)	Offsets (percent)
A	None	None
B	0.12	0.05
C	0.20	0.08
D	0.45	0.20
E	1.10	0.50
F	2.20	0.45
G	3.30	0.90
H	5.00	1.55
I	7.75	1.50
J	11.25	2.10
MB	3.30	0.90
AR	1.10	0.50

(3) *Category pair hedging disallowance haircut factors.* For purposes of this part, the applicable category pair hedging disallowance haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

Category	Percent disallowed								
	C	D	E	F	G	H	I	J	MB
B	30	40							
C		30	40	40					
D			20	30	30				
E				20	30	40			
F					20	40			40
G						20	40		30
H							40	40	40
I								30	

(g) *Total haircuts.* "Total haircuts" equals the sum of the credit risk haircut and the market risk haircut.

(1) *Credit risk haircut.* The "credit risk haircut" equals the sum of the total concentration of credit haircut and the credit volatility haircut.

(i) *Total concentration of credit haircut.* The "total concentration of credit haircut" equals the sum of the concentration of credit haircuts taken for all counterparties, except for counterparties that are principal clearing banks or principal clearing brokers, of the government securities broker or dealer.

(A) *Concentration of credit haircut.* The "concentration of credit haircut" equals the product of a concentration of credit haircut factor of 25 percent the amount by which the net credit exposure to a single counterparty, except a counterparty that is a principal clearing bank or principal clearing broker of the government securities broker or dealer, is in excess of 15 percent of the government securities broker's or dealer's liquid capital.

(B) *Net credit exposure.* For purposes of this part, the "net credit exposure" equals the dollar amount of funds or debt instruments, other securities, and other inventory at risk to the government securities broker or dealer in the event of the counterparty's default, less the amount of funds or debt instruments, other securities, and other inventory risk to the counterparty in the event of the government securities broker's or dealer's default.

(ii) *Credit volatility haircut.* The "credit volatility haircut" equals the product of a credit volatility haircut factor of 0.15 percent and the dollar amount of the larger of the gross long position or gross short position in those Treasury market risk instruments described in paragraphs (e)(1) (iii), (iv) and (v) of this section that have a term to maturity greater than 45 days, and futures, forwards and options thereon, settled on a cash or delivery basis.

(2) *Market risk haircut.* The "market risk haircut" equals the sum of the Treasury market risk haircut and the other securities haircut, calculated in accordance with the provisions of Appendix A of this section, § 402.2a.

(h) *Debt-equity requirements.* No government securities broker or dealer shall permit the total of outstanding principal amounts of its satisfactory subordination agreements as defined in § 240.15c3–1d of this title (Appendix D to SEC Rule 15c3–1) modified as provided in Appendix D to this section, § 402.2d, to exceed the allowable levels set forth in § 240.15c3–1(d) of this title.

(i) *Limitation on withdrawal of equity capital.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to § 240.15c3–1c of this title (Appendix C to SEC Rule 15c3–1) modified as provided in Appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or partner, or by redemption or purchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in § 240.15c3–1d of this title, Appendix D to SEC Rule 15c3–1, modified as provided in Appendix D to this section, § 402.2d) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan, either:

(1) The ratio of liquid capital to total haircuts, determined as provided in § 402.2, would be less than 150 percent; or

(2) Liquid capital minus total haircuts would be less than 120 percent of the minimum capital required by § 402.2(b) or § 402.2(c) as applicable; or

(3) In the case of any government securities broker or dealer included in such consolidation, the total outstanding principal amounts of satisfactory subordination agreements of the government securities broker or dealer (other than such agreements which qualify as equity under § 240.15c3–1(d) of this title) would exceed 70% of the debt-equity total as defind in such § 240.15c3–1(d).

The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions. This provision shall not preclude a government securities broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(j) *Modification of appendices to § 240.15c3–1 of this Title.* For purposes of this part, Appendix C to Rule 15c3–1 (§ 240.15c3–1c of this title), relating to Consolidated Computations of Net Capital, is modified as provided in Appendix C to this section (§ 402.2c), and Appendix D to Rule 15c3–1 (§ 240.15c3–1d of this title), relating to Satisfactory Subordination Agreements, is modified as provided in Appendix D to this section (§ 402.2d).

§ 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).

The market risk haircut is the sum of the Treasury market risk haircut and the other securities haircut, calculated as follows.

(a) *Treasury market risk haircut.* The "Treasury market risk haircut" equals the sum of the total governments offset portion haircut, the total futures and options offset haircut, the total hedging disallowance haircut, and the residual net position haircut, calculated with respect to financings and positions in Treasury market risk instruments, except to the extent that a permissible election is made pursuant to paragraph (b)(1) of this section to include qualified positions in the calculation of the other securities haircut.

(1) *Total governments offset portion haircut.* The "total governments offset portion haircut" equals the sum of the governments offset portion haircuts calculated for each category in § 402.2(f)(1). The "governments offset portion haircuts" equal, for each category in § 402.2(f)(1), the product of the offset haircut factor for that category set out in § 402.2(f)(2) and the smaller of the gross long immediate position or gross short immediate position for that category. Schedules B and C of this Appendix can be used to make this calculation.

(i)(A) The "gross long immediate position" for purposes of this part equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each long immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, the contract values of each reverse repurchase agreement with a term to maturity or time to the next scheduled interest rate adjustment, whichever is less, corresponding to that category, and the values of the cash collateral of each security borrowing with a term to maturity or time to next scheduled interest rate adjustment, whichever is less, corresponding to such category.

(B) In the case of category MB, the "gross long immediate position" equals the sum of the market values of all long immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the "gross long immediate position" equals the sum of the market values of all long immediate positions in adjustable rate

mortgage-backed securities which are Treasury market risk instruments.

(ii)(A) The "gross short immediate position" for purposes of this section equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each short immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, and the values of funds received from each financing transaction (including repurchase agreements, securities lending secured by cash collateral, and bank loans, but excluding subordinated debt which meets the requirements of § 240.15c3–1d of this title modified as provided in § 402.2d) with a term to maturity or time to the next scheduled interest rate adjustment, whichever is less, corresponding to that category.

(B) In the case of category MB, the "gross short immediate position" equals the sum of the market values of all short immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the "gross short immediate position" equals the sum of the market values of all short immediate positions in adjustable rate mortgage-backed securities which are Treasury market risk instruments.

(iii) The term "long immediate position" in a Treasury market risk instrument means, for purposes of this part:

(A) The net long position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net long when-issued position in a marketable U.S. Treasury security between announcement and issue date; and

(C) The net long when-issued position in a government agency or a government sponsored agency debt security between release date and issue date.

(iv) The term "short immediate position" on a Treasury market risk instrument means, for purposes of this part:

(A) The net short position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net short when-issued position in a marketable U.S. Treasury security between announcement and issue date; and

(C) The net short when-issued position in a government agency or a government sponsored agency debt security between release date and issue date.

(2) *Net immediate position interim haircut.* The "net immediate position interim haircut" equals, for each category in § 402.2(f)(1), the product of the net position haircut factor for that category and the sum of the gross long immediate position and the gross short immediate position for that category. For purposes of this part, a gross long immediate position shall be a positive number and a gross short immediate position shall be a negative number. Schedules B and C to this Appendix can be used to make this calculation.

(3) *Total futures and options offset haircut.* The "total futures and options offset haircut" equals the sum of the futures and options offset haircuts calculated for each category in § 402.2(f)(1). The "futures and options offset haircut" equals, for each category in § 402.2(f)(1), the product of a futures and options offset factor of 20 percent and the smaller of the absolute values of the positive and negative aggregate interim haircuts for that category. Schedule D to this Appendix can be used to make this calculation.

(i) *Positive aggregate interim haircut.* The "positive aggregate interim haircut" equals, for each category in § 402.2(f)(1), the sum of a positive net immediate position interim haircut (see paragraph (a)(2) of this Appendix), the gross long futures and forward interim haircut, and the positive gross options interim haircut for that category. Schedule D to this Appendix can be used to make this calculation.

(A) *Gross long futures and forward interim haircut.* The "gross long futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each long futures position and long forward position placed, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each long futures position and each long forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the long futures position or long forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross long futures and forward interim haircut shall be a positive number.

(B) *Positive gross options interim haircut.* The "positive gross options interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each purchased call and sold put placed in the category corresponding to the term to maturity or type of underlying instrument.

(*1*) For purposes of this part, the "interim haircut on each purchased call and sold put" equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*ii*) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the positive gross options interim haircut is a positive number.

(ii) *Negative aggregate interim haircut.* The "negative aggregate interim haircut" equals, for each category in § 402.2(f)(1), the sum of the negative net immediate position interim haircut (see paragraph (a)(2) of this Appendix), the gross short futures and forward interim haircut, and the negative gross options interim haircut for that category. Schedule D to this Appendix can be used to make this calculation.

(A) *Gross short futures and forward interim haircut.* The "gross short futures and forward interim haircuts" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each short futures position and short forward position placed, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, in the category

corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each short futures position and each short forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the short futures position or short forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross short futures and forward interim haircut is a negative number.

(B) *Negative gross options interim haircut.* The "negative gross options interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each sold call and purchased put placed in the category corresponding to the term to maturity or type of underlying instrument.

(*1*) For purposes of this part, the "interim haircut on each sold call and purchased put" equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*ii*) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the negative gross options interim haircut is a negative number.

(4) *Total hedging disallowance haircut.* The "total hedging disallowance haircut" equals the sum of the hedging disallowance haircuts calculated pursuant to each netting of qualified netting interim haircuts. The "hedging disallowance haircut" equals the absolute value of the product of the applicable category pair hedging disallowance haircut factor specified in § 402.2(f)(3) and the smaller in absolute value of any two qualified netting interim haircuts, netted in accordance with the provisions of this paragraph. Schedule E of this Appendix can be used to make this calculation.

(i) *Qualified netting interim haircut.* The term "qualified netting interim haircut" means a residual position interim haircut or a net residual position interim haircut.

(A) *Residual position interim haircut.* The "residual position interim haircut" equals, for each category in § 402.2(f)(1), the sum of the positive aggregate interim haircut and the negative aggregate interim haircut corresponding to the category, calculated in accordance with the provisions of paragraph (a)(3) of this Appendix.

(B)(*1*) *Net residual position interim haircut.* The "net residual position interim haircut" equals, for any two categories between which netting is permitted, the sum of (*i*) the residual position interim haircuts calculated for those categories, in the case of the category of the larger in absolute value of the two residual position interim haircuts being netted, and (*ii*) zero, in the case of the category of the smaller in absolute value of the two residual position interim haircuts being netted.

(*2*) For the purposes of this paragraph (a)(4), netting is permitted only between categories for which a category pair hedging disallowance haircut factor has been specified in paragraph § 402.2(f)(3).

(ii) Net residual position interim haircuts shall be substituted for the residual position interim haircuts in the respective categories in which they have been placed and shall be considered as if they were residual position interim haircuts. New net residual position interim haircuts may continue to be calculated until for each category pair for which netting is permitted at least one of the two qualified netting interim haircuts is zero or both qualified netting interim haircuts are of the same sign.

(5) *Residual net position haircut.* The "residual net position haircut" equals the sum of the absolute values of all qualified netting interim haircuts remaining in each category after the completion of the calculation of permissible nettings described in paragraph (a)(4) of this section.

(b) *Other securities haircut.* The "other securities haircut" equals the sum of all deductions specified in § 240.15c3-1(c)(2)(vi) and (c)(2)(viii) of this title and §§ 240.15c3-1a and 240.15c3-1b of this title for long and short positions in securities, futures contracts, forward contracts, options, and other inventory which are not Treasury market risk instruments as defined in § 402.2(e).

(1) A registered government securities broker or dealer may elect to exclude from its calculation of the Treasury market risk haircut and include in its calculation of the other securities haircut long and short positions in Treasury market risk instruments if such positions form part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options which are not Treasury market risk instruments. The value of each position in Treasury market risk instruments excluded from the calculation of the Treasury market risk haircut and included in the calculation of the other securities haircut may not exceed the value of the position which it offsets as part of a hedge.

(2) For purposes of this paragraph (b), a gross long or short position in Treasury market risk instruments shall be considered part of a hedge if the inclusion of such position in the calculation of the other securities haircut would serve to reduce said haircut.

(c) *Schedules.* This paragraph sets forth schedules which may be used by government securities brokers or dealers in the calculation of total haircuts as required by this Part 402. The appropriate regulatory agency or designated examining authority may specify other substantially similar forms required to be used by government securities brokers or dealers in the calculation of such haircuts.

SCHEDULE A.—LIQUID CAPITAL REQUIREMENT SUMMARY COMPUTATION

[Dollars in thousand]

1. Liquid capital [1]	
2. Haircuts on security and financing positions including contractual commitments:	
a. Total governments offset portion haircut (Schedule C)	
b. Total futures and options offset haircut (Schedule D)	
c. Total hedging disallowance haircut (Schedule E)	
d. Residual net position haircut (Schedule E)	
e. Other securities haircut (use SEC factors	
3. Haircuts on credit exposure:	
a. Concentration of credit haircut	
b. Credit volatility haircut	
4. Total haircuts (lines 2+3)	
5. Capital-to-risk ratio (line 1 divided by line 4)	

[1] Identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G-405.

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Schedule B

Schedule B

Calculation of Net Immediate Positions in Securities and Financings

($ millions)

	Maturity Category 1/	Financings		Securities Positions		Total Securities and Financing Positions		Offset Portions	Net Immediate Positions	
		Long 2/ (+)	Short 2/ (-)	Long (+)	Short (-)	(+)	(-)	(+)	(+/-)	
A	0-44 days									A
B	45-134 days									B
C	135 days-9 months									C
D	9-18 months									D
E	1.5-3.5 years (1.5-3 years)									E
F	3.5-7.5 years (3-5.5 years)									F
G	7.5-15 years (5.5-9 years)									G
H	15-30 years (9-12 years)									H
I	(12-21 years)									I
J	(21 years and over)									J
MB	mortgage-backed									MB
AR	adjustable rate mortgage-backed									AR
	Column Number	1	2	3	4	5 (1+3)	6 (2+4)	7# (Note 1)	8# (5+6)	

Carry forward to Schedule C.

Note 1: The offset portion (Column 7) is the smaller of Columns 5 and 6.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in that category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

2/ Long financings are financings which provide securities to a broker or dealer; short financings are those which provide funds.

Schedule C

Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation
($ millions)

	Maturity Category 1/	Governments Offset Portion			Net Immediate Positions		
		$ Amounts (+)	Factors	Haircuts (+)	$ Amounts (+/-)	Factors	Interim Haircuts (+/-)
A	0-44 days		None			None	
B	45-134 days		0.0005			0.0012	
C	135 days-9 months		0.0008			0.0020	
D	9-18 months		0.0020			0.0045	
E	1.5-3.5 years (1.5-3 years)		0.0050			0.0110	
F	3.5-7.5 years (3-5.5 years)		0.0045			0.0220	
G	7.5-15 years (5.5-9 years)		0.0090			0.0330	
H	15-30 years (9-12 years)		0.0155			0.0500	
I	(12-21 years)		0.0150			0.0775	
J	(21 years and over)		0.0210			0.1125	
MB	mortgage-backed		0.0090			0.0330	
AR	adjustable rate mortgage-backed		0.0050			0.0110	
	Total Governments Offset Portion Haircut $_____						
	Column Number	7 (Note 1)	9	10# (7x9)	8 (Note 1)	11	12## (8x11)

Carry to Schedule A, line 2a
Carry forward to Schedule D (or Schedule E, if no forwards, futures, or options).

Note 1: From Schedule B.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

Schedule D

Schedule D

Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts

($ thousands)

Maturity Category 1/	Net Immediate Position Interim Haircuts (+/-)	Gross Interim Haircuts: Futures & Forward (+)	Gross Interim Haircuts: Futures & Forward (-)	Gross Interim Haircuts: Options (+)	Gross Interim Haircuts: Options (-)	Aggregate Interim Haircuts (+)	Aggregate Interim Haircuts (-)	Futures & Options Offset Portions 2/ (+)	Residual Position Interim Haircuts (+/-)	
B 45-134 days										B
C 135 days-9 months										C
D 9-18 months										D
E 1.5-3.5 years (1.5-3 years)										E
F 3.5-7.5 years (3-5.5 years)										F
G 7.5-15 years (5.5-9 years)										G
H 15-30 years (9-12 years)										H
I (12-21 years)										I
J (21 years and over)										J
MB mortgage-backed										MB
AR adjustable rate mortgage-backed										AR

Total Futures and Options Offset Portion: $ _____

Total Futures and Options Offset Factor: _____

Total Futures and Options Offset Haircut: $ _____ #

Column Number	12 (Note 1)	13	14	15	16	17	18	19 (Note 2)	20##

\# Carry to Schedule A, line 2b.

Carry forward to Schedule E.

Note 1: From Schedule C.

Note 2: Column 19 is the smaller of columns 17 and 18.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year is always considered to be 6 months.

2/ The total futures and options haircut is calculated from the total of column 19.

Schedule E

Calculation of Hedging Disallowance Haircuts
when Netting Haircuts Across Categories 1/
($ thousands)

Maturity Category 2/	Residual Position Interim Haircuts (+/-)	20% Disallowance: Hedging Disallowance Haircuts (+)	20% Disallowance: Net Residual Position Interim Haircuts (+/-)	30% Disallowance: Hedging Disallowance Haircuts (+)	30% Disallowance: Net Residual Position Interim Haircuts (+/-)	40% Disallowance: Hedging Disallowance Haircuts (+)	40% Disallowance: Net Residual Position Interim Haircuts (+/-)	Hedging Disallowance Haircuts (+)	Qualified Netting Interim Haircuts (+)	
B 45-134 days										B
C 135 days-9 months										C
D 9-18 months										D
E 1.5-3.5 years (1.5-3 years)										E
F 3.5-7.5 years (3-5.5 years)										F
G 7.5-15 years (5.5-9 years)										G
H 15-30 years (9-12 years)										H
I (12-21 years)										I
J (21 years and over)										J
MB mortgage-backed										MB
AR adjustable rate mortgage-backed										AR

Total Hedging Disallowance Haircut:$_____

Residual Net Position Haircut:$_____

Column Number	20 (Note 1)	21	22 (Note 2)	23	24 (Note 2)	25	26 (Note 2)	27# (Note 3)	28##

\# Column 27 carries forward to Schedule A, line 2c.

Column 28 total carries forward to Schedule A, line 2d.

Note 1: From Schedule D (or Schedule C, if no forwards, futures, or options).

Note 2: Net of two offsetting haircuts of paired maturity categories.

Note 3: For every entry in column 20 there should be an entry in either column 27 or 28 (but never both).

1/ See Sec 402.2(f)(3) for category pair hedging disallowance haircut factors.

2/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

BILLING CODE 4810-25-C

§ 402.2b [Reserved]

§ 402.2c Appendix C—Modification of § 240.15c3–1c of this title, relating to consolidated calculations of capital, for purposes of § 402.2.

Section 240.15c3–1c of this title shall apply to government securities brokers and dealers subject to the requirements of § 402.2 with the following modifications:

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) References to "net capital" mean "liquid capital" as defined in § 402.2(d).

(c) References to "aggregate indebtedness" shall be disregarded.

(d) References to "17 CFR 240.15c3–1" mean § 402.2.

(e) Section 240.15c3–1c(b)(1) is modified to read as follows:

"(1) If the consolidation, provided for in paragraph (a) of this section, of any such subsidiary or affiliate, results in the increase of the government securities broker's or dealer's liquid capital, as defined in § 204.2(d) of this title, or the decrease of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title, and an opinion called for in paragraph (b)(2) has not been obtained, such benefits shall not be recognized in the government securities broker's or dealer's computation required by § 402.2 of this title."

(f) The reference in § 240.15c3–1c(c)(3) to "17 CFR 240.15c3–1d" means such section as modified by § 402.2d.

§ 402.2d Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.

Section 240.15c3–1d of this title shall apply to government securities brokers and dealers subject to the requirements of § 402.2 with the following modifications.

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) References to "17 CFR 240.15c3–1" mean § 402.2.

(c) Section 240.15c3–1d(a)(2)(iii) is modified to read as follows:

"(iii) The term "Collateral Value" of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the haircuts specified in § 402.2a of this title."

(d) References to "17 CFR 240.15c3–1d" mean that section as modified by this section.

(e) Section 240.15c3–1d(b)(6)(iii) is modified to read as follows:

"(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender, with prior written consent of the government securities broker or dealer and the Examining Authority for such broker or dealer, may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer may not be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. No single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title as applicable."

(f) Section 240.15c3–1d(b)(7) is modified to read as follows:

"(7) A government securities broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturities or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect to such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such government securities broker or dealer."

(g) Section 240.15c3–1d(b)(8) is modified to read as follows:

"(i) The Payment Obligation of the government securities broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation), either the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title, or the government securities broker's or dealer's liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title, as applicable. The subordination agreement may provide that if the Payment Obligation of the government securities broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the government securities broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d."

(h) Section 240.15c3–1d(b)(10)(ii)(B) is modified to read as follows:

"(B) The liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer is less than 120% of total haircuts, as defined in § 402.2(g) of this title, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the government securities broker or dealer, or the Examining Authority or the Commission first determines and notifies the government securities broker or dealer of such fact;".

(i) Section 240.15c3–1d(c)(2) is modified to read as follows:

"(2) *Notice of Maturity or Accelerated Maturity.* Every government securities broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to

all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of such government securities broker or dealer, would be less than 150% of total haircuts, as defined in § 402.2(g) of this title."

(j) Section 240.15c3–1d(c)(5)(i) is modified to read as follows:

"(i) For the purpose of enabling a government securities broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the capital requirements of § 402.2 of this title, a government securities broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a government securities broker or dealer if, at such time, it is subject to any of the reporting provisions of § 405.3 of this title, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement, the liquid capital, as defined in § 402.2(d) of this title, of such broker or dealer would be less than 150% of total haircuts, as defined in § 402.2(g) of this title, or the amount of its then outstanding subordination agreements exceeds the limits specified in § 240.15c3–1(d). Such temporary subordination agreement shall be subject to all other provisions of this Appendix D."

(k) Section 240.15c3–1(c)(5)(ii)(A) is modified to read as follows:

"(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of such broker or dealer, would be less than 180% of total haircuts, as defined in § 402.2(g) of this title."

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

Sec.

403.1 Application of part to registered brokers and dealers.
403.2 Hypothecation of customer securities.
403.3 Use of customers' free credit balances.
403.4 Customer protection—reserves and custody of securities.
403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(A), (b)(2)).

§ 403.1 Application of part to registered brokers and dealers.

Compliance by registered brokers or dealers with §§ 240.8c–1, .15c2–1, and .15c3–2 of this title (Commission Rules 8c–1, 15c2–1 and 15c3–2), and with § 240.15c3–3 of this title (Commission Rule 15c3–3) as modified by § 403.4(a)–(i) constitutes compliance with this part.

§ 403.2 Hypothecation of customer securities.

Every registered government securities broker or dealer shall comply with the requirements of § 240.15c2–1 of this title concerning hypothecation of customer securities with the following modifications:

(a) In § 240.15c2–1(a), the words "as used in section 15(c)(1) of the Act" shall be substituted for the words "as used in section 15(c)(2) of the Act."

(b) Section 240.15c2–1(d) is modified to read as follows:

"(d) *Exemption for clearing liens.* The provisions of paragraphs (a)(2), (a)(3) and (f) of this section shall not apply to any lien or claim of a clearing bank, or the clearing corporation (or similar department or association) of a national securities exchange or a registered national securities association, for a loan made on the date of purchase or sale of the securities subject to said lien and to be repaid on the same calendar day, which loan is incidental to the clearing of transactions in securities or loans through such bank, corporation, department or association: *provided, however,* that for the purpose of paragraph (a)(3) of this section, 'aggregate indebtedness of all customers in respect of securities carried for their accounts' shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph."

§ 403.3 Use of customers' free credit balances.

Every registered government securities broker or dealer shall comply with the requirement of § 240.15c3–2 of this title concerning the use of customer free credit balances.

§ 403.4 Customer protection—reserves and custody of securities.

Every registered government securities broker or dealer shall comply with the requirements of §§ 240.15c3–3 and 240.15c3–3a of this title (Commission Rule 15c3–3 and Exhibit A thereto), with the following modifications:

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) "Fully paid securities", as defined in § 240.15c3–3(a)(3) of this title, includes all securities held by a government securities broker or a government securities dealer for the account of a customer who has made full payment for such securities.

(c) "Margin securities", as defined in § 240.15c3–3(a)(4) of this title, includes any securities for which a customer has not made full payment and for which the customer has received an extension of credit by a government securities broker or government securities dealer for a portion of the purchase price.

(d) "Excess margin securities", as defined in § 240.15c3–3(a)(5) of this title, includes margin securities carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts with the broker or dealer.

(e) For purposes of this section, § 240.15c3–3(b) of this title shall include a new paragraph (4) as follows:

"(4)(i) A broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a person other than another broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) shall:

"(A) Obtain the repurchase agreement in writing;

"(B) Provide in such agreement that when the contract price in the aggregate of all currently outstanding repurchase transactions with a single counterparty is less than $5,000,000, any substitution of other securities for the securities that are the subject of any repurchase transaction, pursuant to the terms of the repurchase agreement, may be made only with the prior agreement of the counterparty to each specific substitution;

"(C) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the initiation of the transaction and at the end of any day during which other securities are substituted;

"(D) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 may not provide any protection to the counterparty with respect to the repurchase agreement, and to the extent that it is deemed applicable, the amount of protection provided may not exceed $500,000; and

"(E) Maintain possession or control of securities that are the subject of the agreement.

"(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of §§ 240.15c3–3(c)(1), (c)(5), (c)(6), or § 403.4(f) of this title.

"(iii) A broker or dealer shall not be required to maintain possession or control during the trading day if:

"(A) the repurchase agreement provides for the consent of the counterparty to limited possession or control by including the following provisions:

"(*1*) 'The securities allocated to the repurchase transaction under the agreement may be segregated from the seller's own securities only at the end of each trading day.'; and

"(*2*) 'While the securities are commingled with the seller's own securities during the course of a trading day, they may be subject to a clearing lien or use by the seller for deliveries on other securities transactions.'; and

"(B) The contract price of all currently outstanding repurchase agreements with that counterparty in the aggregate equals or exceeds $5,000,000."

(f)(1) Securities under the control of a broker or dealer, as described in § 240.15c3–3(c) of this title, shall include securities maintained by a broker or dealer in an account at a depository institution, as defined in section 19(b)(A)(i)–(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)), which depository institution has a book-entry securities account at a Federal Reserve Bank through which it provides clearing services ("clearing bank"), provided the securities are maintained in a Segregated Account of the government securities broker or dealer.

(2) For purposes of this paragraph and paragraph (g) of this section, a Segregated Account is an account (other than a clearing account) of the government securities broker or dealer maintained on the books of a clearing bank pursuant to a written clearing agreement with such clearing bank which provides that:

(i) Such account is established for the purpose of segregating securities of counterparties or customers of such broker or dealer from proprietary securities of the broker or dealer;

(ii) The broker or dealer is entitled to direct the disposition of the securities; and

(iii) The clearing bank does not have, and will not assert, any claim or lien against such securities nor will the clearing bank grant any third party, including any Federal Reserve Bank, any interest in such securities so long as they are maintained in the segregated account.

(g) In addition to the notification required by § 240.15c3–3(i) of this title, whenever any government securities broker or dealer is notified by a clearing bank that the bank refuses to place securities in a Segregated Account (as defined in paragraph (f) of this section), the broker or dealer shall, in accordance with § 240.17a–11(f) of this title, give telegraphic notice of the notification by the clearing bank within 24 hours and within 48 hours of the telegraphic notice, file a report stating what steps are being taken to correct the situation.

(h) For purposes of this section, § 240.15c3–3(l) of this title is modified to read as follows:

"(1) *Delivery or disposition of securities.* Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

"(1) Fully-paid securities to which the customer is entitled;

"(2) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

"(3) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer."

(i) For purposes of this section § 240.15c–3(m) shall apply to government securities, notwithstanding the May 9, 1973, order of the Commission (38 FR 12103) suspending such applicability.

(j) For purposes of this section, § 240.15c3–3(e)(3) is modified to read as follows:

"(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5 (a)(1)(A)) which has a ratio of liquid capital to total haircuts (calculated in accordance with Part 402 of this chapter) of 1.8 or greater and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent f the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a registered government securities broker or dealer, computing on a monthly basis, has, at the time of any required computation, a ratio of liquid capital to total haircuts of less then 1.8, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when its ratio of liquid capital to total haircuts was less than 1.8. Computations in addition to the computation required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The registered government securities broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve such record in accordance with § 240.17a–4."

(k) For purposes of this section, Note E(5) of § 240.15c3–3a of this title is modified to read as follows:

"(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer's debit balance exceeds 25% (to the extent such amount is greater than $50,000) of the government securities broker's or dealer's liquid capital unless such broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula.

Related accounts (*e.g.*, the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer's accounts for purposes of this provision."

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

(a) A government securities broker or dealer that is a financial institution shall:

(1) Comply with Part 450 with respect to all securities held for the account of customers of the financial institution in its capacity as a fiduciary or custodian (unless otherwise exempt pursuant to § 450.3); and

(2) Comply with Part 450 and with paragraphs (c) and (d) of this section with respect to all securities held for customers or counterparties of the financial institution in its capacity as government securities broker or dealer.

(b) A financial institution shall not be in violation of the possession or control requirements of paragraphs (c) and (d) of this section if, solely as the result of normal business operations, temporary lags occur between the time when a security is first required to be in the financial institution's possession or control and the time when it is actually placed in possession or control, provided that the financial institution takes timely steps in good faith to establish prompt possession or control.

(c)(1) On each business day a financial institution shall determine the quantity and issue of such securities, if any, that are required to be but are not in the financial institution's possession or control. As appropriate to bring such securities into possession or control, the financial institution shall promptly:

(i) Obtain the release of any lien, charge, or other encumbrance against such securities,

(ii) Obtain the return of any securities loaned;

(iii) Obtain possession or control of securities failed to receive for more than 30 days;

(iv) Buy in securities as necessary to the extent any shortage of securities in possession or control cannot be resolved by any of the above procedures.

(2) The financial institution shall prepare and maintain a current and detailed description of the procedures and internal controls that it utilizes to comply with the possession or control requirements of this paragraph (c), which shall be made available upon request to its appropriate regulatory agency.

(3) Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

(i) Fully-paid securities to which the customer is entitled;

(ii) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

(iii) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a person other than another broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) shall:

(i) Obtain the repurchase agreement in writing;

(ii) Provide in such agreement that when the contract price in the aggregate of all currently outstanding repurchase transactions with a single counterparty is less than $5,000,000, any substitution of other securities for the securities that are the subject of any repurchase transaction, pursuant to the terms of the repurchase agreement, may be made only with the prior agreement of the counterparty to such substitution;

(iii) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the initiation of the transaction and at the end of any day during which other securities are substituted;

(iv) Advise the counterparty in the repurchase agreement that the funds held by the financial institution pursuant to a repurchase transaction are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, as applicable; and

(v) Maintain possession or control of securities that are the subject of the agreement in accordance with § 450.4 (a) and (b).

(2) The financial institution shall not be required to maintain possession or control during the trading day if:

(i) The repurchase agreement provides for the consent of the counterparty to limited possession or control by including the following provisions:

(A) "The securities allocated to the repurchase transaction under the agreement may be segregated from the seller's own securities only at the end of each trading day."; and

(B) "While the securities are commingled with the seller's own securities during the course of a trading day, they may be subject to a clearing lien or use by the seller for deliveries on other securities transactions."; and

(ii) The contract price in the aggregate of all currently outstanding repurchase transactions with that counterparty equals or exceeds $5,000,000.

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

Sec.

404.1 Application of part to registered brokers and dealers.
404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.
404.3 Records to be preserved by registered government securities brokers and dealers.
404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.
404.5 Securities counts by registered government securities brokers and dealers.
404.6 Securities counts by government securities brokers and dealers that are financial institutions.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(2)).

§ 404.1 Application of part to registered brokers and dealers.

Compliance by a registered broker or dealer with:

(a) Section 240.17a–3 of this title, pertaining to records to be made, modified as provoded in §§ 404.2(a) (3), (4) and (5);

(b) Section 240.17a–4 of this title, pertaining to preservation of records;

(c) Section 204.17a–13 of this title, pertaining to quarterly securities counts, modified as provided in § 404.5(a)(2); and

(d) Section 240.17a–7 of this title, pertaining to records of non-resident brokers or dealers, shall constitute compliance with this part.

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–3 of this title (Commission Rule 17a–3), with the following modifications:

(1) References to "broker or dealer" and "broker or dealer registered pursuant to Section 15 of the Act" include registered government securities brokers or dealers.

(2) References to §§ 240.17a–3, .17a–4, .17a–5, and .17a–13 mean such sections as modified by this Part and Part 405 of this chapter.

(3) Section 240.17a–3(a)(4) is revised by adding paragraph (a)(4)(vii) to read as follows:

"(vii) Repurchase and reverse repurchase agreements."

(4) Section 240.17a–3(a)(5) is modified to read as follows:

"(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker, or dealer for his account or for the account of his customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried."

(5) Section 240.17a–3(a)(8) is modified to read as follows:

"(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer."

(6) Paragraph 240.17a–3(a)(11) is modified to read as follows:

"(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of liquid capital and total haircuts, as of the trial date, determined as provided in § 402.2 of this title; *provided however,* that such computation need not be made by any registered government securities broker or dealer unconditionally exempt from Part 402 of this title by § 402.1(e) of this title. Such trial balances and computations shall be prepared currently at least once a month."

(7) Paragraph 240.17a–3(b)(1) is modified to read as follows:

"(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided,* that the clearing broker or dealer has and maintains net capital of not less than $25,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than $25,000) and is otherwise in compliance with § 240.15c3–1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3–1 by paragraph (b)(2) thereof."

(8) The undertaking in § 240.17a–3(b)(2) is modified to read as follows:

"The undersigned hereby undertakes to maintain and preserve on behalf of [registered government securities broker or dealer] the books and records required to be maintained by [registered government securities broker or dealer] pursuant to 17 CFR §§ 404.2 and 404.3 and Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned."

(9) Section 240.17a–3(c) is modified to read as follows:

"(c) This section shall not be deemed to require a government securities broker or dealer to make or keep such records as the required by paragraph (a) reflecting the sale and redemption of United States Savings Bonds, United States Savings Note and United States Savings Stamps."

(b)(1) Every non-resident government securities broker or dealer registered or applying for registration pursuant to section 15C of the Act shall comply with § 240.17a–7 of this title, *provided that* in such section references to "broker or dealer" shall include government securities brokers or dealers.

(2) The term "non-resident government securities broker or dealer" means (i) in the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

§ 404.3 Records to be preserved by registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–4 of this title (Commission Rule 17a–4), with the following modifications:

(a) References to "broker or dealer" and "broker and dealer" include registered government securities brokers or dealers.

(b) References to §§ 240.17a–3, .17a–4, and .17a–5 mean such sections as modified by this part and Part 405 of this chapter.

(c) References to § 240.15c3–1, relating to net capital, and "Computation for Net Capital" thereunder mean § 402.2 of this chapter and the computation of the ratio of liquid capital to total haircuts required thereunder.

(d) References to § 240.15c3–3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(e) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(f) The computation described in § 240.17a–4(b)(8)(x) is not required.

§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

(a) Every financial institution that is a government securities broker or dealer and that is not exempt from this part pursuant to Part 401 of this chapter shall comply with the requirements of §§ 404.2 and 404.3 unless such financial institution:

(1) Is subject to 12 CFR Part 12 (relating to national banks), 12 CFR Part

208 (relating to state member banks of the Federal Reserve System) or 12 CFR 344 (relating to state banks that are not members of the Federal Reserve System), *provided however,* that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for transactions in U.S. government or federal agency obligations provided in 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a); and

(2) Makes and keeps current:

(i) A securities record or ledger reflecting separately for each government security as of the clearance dates all "long" or "short" positions (including government securities in safekeeping and government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its account or for the account of its customers or others and showing the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

(ii) A complete and current Form G–FIN–4 (§ 449.3 of this chapter) or Form U–4 (promulgated by a self-regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers) for each associated person as defined in § 400.4(e) of this chapter; and

(iii) A Form G–FIN–5 (§ 449.4 of this chapter) or Form U–5 (promulgated by a self-regulatory organization) or Form MSD–5 (as required for associated persons of bank municipal securities dealers) for each associated person whose association has been terminated as provided in § 400.4(d)(2) of this chapter.

(b)(1) The records required by paragraph (a)(2)(i) of this section shall be preserved for not less than six years, the first two years in an easily accessible place.

(2) The records required by paragraphs (a)(2) (ii) and (iii) of this section shall be preserved for at least three years after the person who is the subject of the record has terminated his employment and any other association with the government securities broker or dealer function of the financial institution.

§ 404.5 Securities counts by registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–13 of this title (Commission Rule 17a–13), with the following modifications:

(a) References to "broker or dealer" and "broker and dealer" include registered government securities brokers or dealers.

(b) Sections 240.17a–13(b)(1), (2), and (3) are modified to read as follows:

"(1) Physically examine and count all securities held, including securities that are the subject of repurchase or reverse repurchase agreements;

"(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

"(3) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days;".

§ 404.6 Securities counts by government securities brokers and dealers that are financial institutions.

(a) Every government securities broker or dealer that is a financial institution shall, at least once in each calendar year, with respect to all government securities held by the financial institution for customers except those securities held in a fiduciary capacity or in a custodial capacity within the financial institution's trust department,

(1) Physically examine and count securities held in definitive form, including securities that are the subject of repurchase or reverse repurchase agreements;

(2) Account for securities, including securities held in book-entry form and securities subject to repurchase or reverse repurchase agreements or otherwise subject to the financial institution's control or direction but not in its physical possession, by examination and comparison of the supporting detail records and with the appropriate ledger control accounts and by verification of the records of the financial institution with those of any depository, depository institution or Federal Reserve Bank on whose books the financial institution has securities accounts;

(3) Verify securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the financial institution's control or direction but not in its physical possession, where such securities have been in said status for longer than thirty days;

(4) Compare the results of the counts required by paragraphs (a)(1) and (2) of this section and verification with the institution's records; and

(5) Record on the books and records of the financial institution all unresolved differences, setting forth the security involved and the date of comparison in a security count difference account no later than seven business days after the date of each required annual securities examination, count, and verification as provided in this paragraph.

(b) For the purposes of this section, "fiduciary capacity" includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole and shared exercise of discretion by a financial institution having fiduciary powers that is supervised by a federal or state financial institution regulator agency.

PART 405—REPORTS AND AUDIT

Sec.

405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.
405.2 Reports to be made by registered government securities brokers and dealers.
405.3 Supplemental current financial and operational reports to be made by certain registered government securities brokers and dealers.
405.4 Financial recordkeeping and reporting of currency and foreign transactions.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(2)).

§ 405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

(a) Compliance by registered brokers or dealers with §§ 240.17a–5, .17a–8, and .17a–11 of this title (Commission Rules 17a–5, 17a–8 and 17a–11) constitutes compliance with this part.

(b) A government securities broker or dealer that is a financial institution and is subject to financial reporting rules of its appropriate regulatory agency is

exempt from the provisions of §§ 405.2 and 405.3.

(c) This part shall be effective July 25, 1987, *provided however,*

(1) That registered government securities brokers or dealers shall first be required to file the reports required by § 240.17a–5(a), by virtue of § 405.2, for the month and the quarter during which they were first required to comply with § 402.2 of this chapter; but that

(2) For any quarter ending prior to the quarter during which they were first required to comply with § 402.2 of this chapter, registered government securities brokers or dealers shall file with the designated examining authority for such registered broker or dealer, within 17 business days after the close of the quarter, an unaudited balance sheet (with appropriate notes) for such quarter, prepared in accordance with generally accepted accounting principles.

§ 405.2 Reports to be made by registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–5 of this title (Commission Rule 17a–5), with the following modifications:

(a) References to "broker or dealer" include registered government securities brokers and dealers.

(b) References to "rules of the Commission" or words of similar import include, where appropriate, the regulations contained in this chapter.

(c) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(d) For the purpose of § 240.17a–5(a)(4) of this title, the Commission may, on the terms and conditions stated in that subparagraph, declare effective a plan with respect to Form G–405, in which case, that plan shall be treated the same as a plan approved with respect to Form X–17A–5.

(e) References to "net capital" mean "liquid capital" as defined in § 402.2(d) of this chapter.

(f) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(g) Paragraph 240.17a–5(c)(2)(ii) is modified to read as follows:

"(ii) A footnote containing a statement of the registered government securities broker's or dealer's liquid capital, total haircuts, and ratio of liquid capital to total haircuts, determined in accordance with § 402.2 of this title. Such statement shall include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.15c3–1 modified as provided in § 402.2c of this title, where material, and the effect thereof on the liquid capital, total haircuts and ratio of liquid capital to total haircuts of the registered government securities broker or dealer."

(h) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(i) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 240.15Ca2–2.

(j) The supplemental report described in § 240.17a–5(e)(4) of this title, concerning the Securities Investor Protection Act, is not required.

(k) The statement described in § 240.17a–5(f)(2) of this title shall be headed "Notice Pursuant to Section 405.2," and shall be filed within 30 days following the effective date of registration as a government securities broker or dealer.

(l) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3 of this chapter.

§ 405.3 Supplemental current financial and operational reports to be made by certain registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–11 of this title (Commission Rule 17a–11), with the following modifications:

(a) References to "broker or dealer" include registered government securities brokers and dealers.

(b) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(c) References to "net capital" mean "liquid capital" as defined in § 402.2 of this chapter.

(d) References to § 240.15c3–1d, relating to subordination agreements, mean that section as modified by § 402.2d of this chapter.

(e) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(f) References to § 240.17a–5, relating to reports and audit, mean § 405.2 of this chapter.

(g) Section 240.17a–11(b)(1), for the purposes of this section, is modified to read as follows:

"(1) If a computation made by a registered government securities broker or dealer pursuant to the requirements of § 402.2 of this title shows, at any point during the month, that his liquid capital is less than 150 percent of total haircuts, determined in accordance with § 402.2 of this title, such person shall file a report on Part II or Part IIA of Form G–405 (§ 449.5 of this title) as determined in accordance with the standards set forth in § 240.17a–5(a)(2) (ii) and (iii), within 15 calendar days after the end of each month thereafter until 3 successive months shall have elapsed during which liquid capital does not fall below 150 percent of total haircuts."

(h) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

§ 405.4 Financial recordkeeping and reporting of currency and foreign transactions.

Every government securities broker or dealer who is subject to the requirements of the Currency and Foreign Transactions Reporting Act of 1970 shall comply with the reporting, recordkeeping and record retention requirements of 31 CFR Part 103. Where 31 CFR Part 103 and § 404.3 of this chapter require the same records to be preserved for different periods of time, such records or reports shall be preserved for the longer period of time.

PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

Sec.

449.1 Form G–FIN, notification by financial institutions of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.

449.2 Form G–FINW, notification by financial institutions of cessation of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.

449.3 Form G–FIN–4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

449.4 Form G–FIN–5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

449.5 Form G–405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.4 of this chapter.

449.6 Display of OMB control numbers.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o–5(a), (b)(1)(B), (b)(2)).

§ 449.1 Form G–FIN, notification by financial institutions of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.

This form is to be used by financial institutions that are government securities brokers and dealers not exempt under Part 401 of this chapter to notify their appropriate regulatory

agency of their status. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.2 Form G-FINW, notification by financial institutions of cessation of status as government securities broker or dealer purusant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.

This form is to be used by financial institutions that are government securities brokers or dealers to notify their appropriate regulatory agency that they have ceased to function as a government securities broker or dealer. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.3 Form G-FIN-4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

This form is to be used by associated persons of financial institutions that are government securities brokers or dealers to provide certain information to the financial institution and the appropriate regulatory agency concerning employment, education, residence, and statutory disqualification. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.4 Form G-FIN-5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

This form is to be used by financial institutions that are government securities brokers or dealers to notify the appropriate regulatory agency of the fact that an associated person is no longer associated with the government securities broker or dealer function of the financial institution. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.5 Form G-405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.4 of this chapter.

This form is to be used by registered government securities brokers and dealers to make the monthly, quarterly and annual financial reports required by Part 405 of this chapter. The form is promulgated by the Department of the Treasury and is available from the SEC and the designated examining authorities.

§ 449.6 Display of OMB control numbers.

The following rules promulgated by the Department of the Treasury pursuant to the Government Securities Act of 1986 containing information collection requirements are listed with the control numbers assigned by the Office of Management and Budget.

Part or section of Title 17, CFR	Currently assigned OMB control No.
§ 400.4	
§ 400.5	
§ 400.6	
§ 404.2	
§ 404.3	
§ 404.4	
§ 404.5	
§ 404.6	
§ 405.2	
§ 405.3	

SUBCHAPTER B—RULES AND REGULATIONS UNDER TITLE II OF THE GOVERNMENT SECURITIES ACT OF 1986

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

Sec.

450.1 Scope of regulations; office responsible.
450.2 Definitions.
450.3 Exemption for trust holdings and holdings in trust departments.
450.4 Custodial holdings of government securities.
450.5 Display of OMB control numbers.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o–5(b)(1)(A), (b)(2), (b)(3)(B)); Sec. 201, Pub. L. 99–571, 100 Stat. (31 U.S.C. 3121, 9110).

§ 450.1 Scope of regulations; office responsible.

(a) This part applies to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer, and that are not government securities brokers or dealers, as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)), Depository institutions exempted under Part 401 of this chapter from the requirements applicable to government securities brokers or dealers must comply with this part. Certain depository institutions that are government securities brokers or dealers must also comply with this part, as well as with additional requirements set forth in § 403.5.

(b) The regulations in this subchapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Deputy Assistant Secretary (Federal Finance).

§ 450.2 Definitions.

For purposes of this subchapter:

(a) "appropriate regulatory agency" has the meaning set out in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for—

(1) An institution insured by the Federal Savings and Loan Insurance Corporation is the Federal Home Loan Bank Board;

(2) A Federal credit union as defined in 12 U.S.C. 1752(1) and an insured credit union as defined in 12 U.S.C. 1752(7) is the National Credit Union Administration; and

(3) Any depository institution for whom an appropriate regulatory agency is not explicitly specified by either section 3(a)(34)(G) or this paragraph, is the SEC;

(b) "customer" includes the counterparty to a transaction pursuant to a repurchase agreement for whom the depository institution retains possession of the security sold subject to repurchase, but does not include a broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) except to the extent that a depository institution holds securities for customers of such broker or dealer;

(c) "depository institution" has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International

Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607);

(d) "fiduciary capacity" includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a depository institution having fiduciary powers that is supervised by a federal or state financial institution regulatory agency; and

(e) "government securities" means those obligations described in subparagraphs (A), (B), or (C) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C)).

§ 450.3 Exemption for trust holdings and holdings in trust departments.

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity within their trust departments, provided such institutions agree, with respect to such custodial holdings, to adhere to all requirements applicable to holdings of government securities in a fiduciary capacity imposed by their appropriate regulatory agency.

(b) The Secretary expects that each appropriate regulatory agency will notify the Department if it materially revises its rules and standards governing the holding of government securities in a fiduciary capacity.

§ 450.4 Custodial holdings of government securities.

Depository institutions that are subject to this Part shall observe the following requirements with respect to their holdings of government securities for customer accounts:

(a) All government securities held for the account of customers shall be segregated from the assets of the depository institution and shall be kept free of any charge, lien or claim of any kind, unless expressly agreed to in writing by the customer for whose account such securities are held. A safekeeping receipt or a confirmation shall be issued for every government security held for a customer.

(b) All depository institutions holding government securities for customers shall maintain possession or control of such securities. Securities shall be deemed to be under the control of a depository institution to the extent that it has instructed a Federal Reserve Bank, correspondent bank, trust company, or other custodian, as appropriate, to maintain possession or control of such securites free of any charge, lien, or claim of any kind in favor of such correspondent bank, trust company, or other custodian or any persons claiming through them, except to the extent expressly agreed to in writing by the customer for whose account such securities are held.

(c) Records of government securities held for customers shall be kept separate and distinct from other records of the depository institution. Such records shall:

(1) Provide a system for identifying each customer and each government security held for the customer, unless the depository institution is holding securities for customers of another depository institution or of a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) or a government securities broker or dealer that has filed notice of its status pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B));

(2) Describe the customer's interest in the government security;

(3) Indicate all receipts and deliveries of government securities and all receipts and disbursements of cash in connection with such securities;

(4) Include a copy of the safekeeping receipt or a confirmation issued for each government security held; and

(5) Provide an adequate basis for audit of such information.

(d) Counts of government securities held for customers in both definitive and book-entry form shall be conducted at least annually and such counts shall be reconciled with customer account records. Counts of book-entry securities and of definitive securities held outside the possession of the depository institution shall be made by verification of the records of the depository institution with those of any depository, depository institution, or Federal Reserve Bank on whose books the depository institution has securities accounts. The dates and results of such counts and reconcilements shall be documented with differences noted.

§ 450.5 Display of OMB control numbers.

The following rules promulgated by the Department of the Treasury pursuant to the Government Securities Act of 1986 containing information collection requirements are listed with the control numbers assigned by the Office of Management and Budget.

Part or section of Title 17, CFR	Currently Assigned OMB Control No.
§ 450.4	

Dated: February 19, 1987.

Charles O. Sethness,

Assistant Secretary for Domestic Finance.

[FR Doc. 87–3800 Filed 2–24–87; 8:45 am]

BILLING CODE 4810–25–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Rel. No. 34–24109; File No. S7–4–87]

Request for Comments on Proposed Rules and Proposed Revisions of Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking and form revision.

SUMMARY: The Commission is publishing for comment proposed rules to implement provisions of the Government Securities Act of 1986, which requires currently unregulated government securities brokers or government securities dealers to register with the Commission. Registered broker-dealers who act as government securities brokers or government securities dealers must file written notice with the Commission. The proposed rules prescribe the form and information required to be filed by government securtities broker-dealers in their applications for registration with the Commission. The Commission also is publishing for comment proposed revisions to Form BD, the form used to register as a broker-dealer. The proposed revisions adapt the form for use by government securities broker-dealers and enable government securities broker-dealers currently registered or registering with the Commission to use Form BD in order to notify the Commission of their activities as government securities broker-dealers.

DATES: Comments should be submitted by March 18, 1987.

ADDRESSES: All comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549, and should refer to File No. S7–4–87. All submissions will be available for public inspection at the Commission's

Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Lynne G. Masters, Esq. at (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Introduction

On October 28, 1986, the Securities Exchange Act of 1934 (the "Exchange Act") was amended by Pub. L. No. 99–571,[1] the Government Securities Act of 1986 (the "Act"). As amended, the Exchange Act contains a new section 15C(a) that requires government securities brokers [2] and government securities dealers,[3] other than those already registered with the Commission or financial institutions,[4] to register with the Commission, by July 25, 1987.[5] Under the Act, broker-dealers currently registered with the Commission [6] that act as government securities brokers or government securities dealers are not required to re-register with the Commission. They are, however, required to file by July 25, 1987 [7] written notice with the Commission that they are government securities brokers or government securities dealers. [8] Similarly, financial institutions that are government securities brokers or dealers are required to file with their appropriate regulatory agency [9] by July 25, 1987 written notice in the form prescribed by the Board of Governors of the Federal Reserve System.

Government securities brokers and government securities dealers are subject to the rulemaking authority of the Secretary of the Treasury ("Treasury") in the areas of financial responsibility, reporting, recordkeeping, and exemptions from rulemaking. The Treasury has proposed rules in these areas, at 17 CFR 400.1–405.3.

For government securities broker-dealers required to register under section 15C(a)(1)(A) of the Exchange Act, the Act directs the Commission to prescribe the forms to be used for registration and for withdrawal from registration, as well as the information that must be filed with the required forms. In addition, the Act authorizes the Commission to establish the form to be used by registered broker-dealers that must file notice with the Commission of their status as government securities broker-dealers. In order to implement the registration, withdrawal from registration, and notice requirements of the Act, the Commission is proposing the rules described more fully below and the corresponding revisions to Form BD. Unless otherwise noted, these rules impose upon government securities broker-dealers required to register under the Act [10] disclosure and filing requirements for registration and withdrawal from registration similar to those that are imposed upon other broker-dealers. The proposed revisions to Form BD are intended to adapt the form for use by government securities broker-dealers applying for registration and by registered broker-dealers notifying the Commission of their government securities activities or intention to cease such activities.

I. Discussion of Rules

1. *Proposed Rule 15Cal–1.* The Commission is proposing Rule 15Cal–1 to implement the requirement that

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[1] 100 Stat. 3208.

[2] New section 3(a)(43) of the Exchange Act defines a government securities broker as:

Any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) Any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) Any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

[3] New section 3(a)(44) of the Exchange Act defines a government securities dealer as:

Any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) Any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) Any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) Any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) Any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

[4] New section 3(a)(46) of the Exchange Act defines "financial institution" as "(A) a bank as defined in section 3(a)(6) of the Act, (B) a foreign bank, and (C) an insured institution as such term is defined in section 401 of the National Housing Act."

[5] Government securities brokers and dealers registering pursuant to section 15C(a) are also required to become members of a registered securities association or a national securities exchange. *See* section 15C(e)(1).

[6] These broker-dealers (hereinafter referred to as "registered broker-dealers") are broker-dealers registered under Section 15(b) of the Exchange Act and non-bank intrastate municipal securities dealers registered under Section 15B of the Exchange Act. *See* section 3(a)(48).

[7] Because July 25, 1987, falls on a Saturday, registered broker-dealers required to file notice must file their notices no later than July 27, 1987. *See* Rule 0–3(a).

[8] After the effective date of the amendments, all registered broker-dealers that are government securities broker-dealers are required by section 15C(a)(1)(B)(i) to file a notice with the Commission when they cease to act as a government securities broker or dealer. Section 15C(a)(1)(B) provides that a government securities broker or dealer must file a written notice with the appropriate regulatory authority when it ceases to act as a government securities broker or dealer. Although the literal language of this provision could be interpreted to apply to any government securities broker or dealer, the Commission believes that Congress intended this provision to apply only to broker-dealers registered pursuant to sections 15 and 15B and financial institutions, and not to government securities broker-dealers registered solely pursuant to section 15C(a)(1)(A).

[9] As amended, section 3(a)(34) of the Exchange Act defines "appropriate regulatory agency" to include the following new paragraph:

(G) When used with respect to a government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) The Comptroller of the Currency, in the case of a national bank, a bank in the District of Columbia examined by the Comptroller of the Currency, or a Federal branch or Federal agency of foreign bank (as such terms are used in the International Banking Act of 1978);

(ii) The Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

(iii) The Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal Savings Bank);

(iv) The Federal Home Loan Bank Board, in the case of a Federal Savings and Loan Association, Federal Savings Bank, or District of Columbia savings and loan association;

(v) The Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal Savings and Loan Association, Federal Savings Bank, or District of Columbia savings and loan association);

(vi) The Commission, in the case of all other government securities brokers and government securities dealers.

The term "District of Columbia savings and loan associations", means "any association subject to examination and supervision by the Federal Home Loan Bank Board under Section 8 of the Home Owners Loan Act of 1933."

[10] The Commission will exercise its interpretive and no-action authority in determining whether registration under the Act is required. *See* S. Rep. No. 426, 99th Cong., 2d. Sess. n.37 (1986). Requests for interpretative or no-action advice should be addressed to the Chief Counsel, Division of Market Regulation.

government securities broker-dealers already registered with the Commission pursuant to sections 15(b) or 15B(a) of the Exchange Act file written notice with the Commission that they are government securities brokers or dealers.[11] The Rule requires such government securities broker-dealers to file notice on Form BD that they are government securities broker-dealers by July 25, 1987. Proposed Rule 15Cal–1 also requires a registered broker-dealer that begins government securities activities after July 25, 1987 to file written notice on Form BD with the Commisison on or prior to the day it begins acting as a government securities broker-dealer. Paragraph (b) of the Rule requires a registered broker-dealer that has previously filed notice of government securities activities to file written notice on Form BD within 30 days of ceasing to act as a government securities broker-dealer.

2. *Proposed Rule 15Ca2–1:* Under paragraph (a) of proposed Rule 15Ca2–1, government securities broker-dealers required to register pursuant to new section 15C(a)(1)(A) would be required to apply for registration on Form BD. Form BD is the uniform application form for broker-dealer registration [12] used by the Commission, state securities regulators, and the National Association of Securities Dealers, Inc. ("NASD").[13] Form BD requires that an applicant provide the Commission with information concerning the nature of its business, the background of its principals, its controlling persons, and its employees and is designed to permit the Commission to determine whether the applicant meets the statutory requirements to engage in the securities business.[14] Because the Act requires applicants registering under section 15C(a)(1)(A) to meet substantially the same statutory requirements as other applicants for broker-dealer registration, the Commission has determined to use Form BD as the application for registration for government securities broker-dealers. Government securities broker-dealers required to register pursuant to section 15C(a)(1)(A) will be required to complete all Items on the Form.

At present, Rule 15b3–1(b) requires registered broker-dealers to amend their Form BDs promptly whenever information contained in the forms becomes inaccurate.[15] The proposed rules do not contain a similar provision because such amendments are deemed reports under the Act, and the Act vests the Treasury with the authority to adopt reporting requirements. However, the Treasury has proposed a rule requiring that Form BD be amended when the Form as filed becomes inaccurate.[16]

3. *Proposed Rule 15Ca2–2: Statement of Financial Condition to be Filed with Application for Registration as a Government Securities Broker or Government Securities Dealer.* Proposed Rule 15Ca2–2 requires a government securities broker-dealer applying for registration to submit as part of its application on Form BD a statement of financial condition and other information concerning the applicant's financial resources. For example, the Rule requires: (1) Disclosure of the applicant's assets, liabilities and net worth, (2) a schedule listing the applicant's securities and, if readily marketable, their market value, (3) a computation made in accordance with the capital requirements to be established by the Secretary of the Treasury,[17] (4) a statement describing the nature and source of capital and representing that such amount of capital has been contributed to and will continue to be devoted to the business, (5) a statement concerning establishment and maintenance of the facilities and financing required for the operation of the business, and (6) a statement for the ensuing year of operations (a) describing the arrangements made for obtaining the funds necessary to operate the business, (b) setting forth the anticipated expenses for that year, and (c) providing information as to any arrangements which have been made to obtain additional financing if it becomes necessary. The purpose of the proposed rule is to allow the Commission to determine whether the applicant has the required amount of capital and the capacity to operate as a going concern.

Many of the government securities brokers and dealers required to register under the Act have been in operation for substantial periods of time. Because these firms often have substantial inventories of securities and adequate, well-established businesses, paragraph (e) of the proposed rule provides that firms in operation for one or more years prior to July 25, 1987, the effective date of the Act, are not required to submit a schedule of securities, a detailed description of the firm's personnel and physical facility, or a detailed description of arrangements for and uses of its funds. Such firms, however, must represent that they have been acting as a government securities broker or dealer as of a date prior to July 25, 1986. In reviewing the appropriateness of this exemption, the Commission requests comment generally on the utility of the information required by this rule to the self-regulatory organizations in reviewing registration applications and admitting applicants to membership.

4. *Proposed Rule 14Ca2–3: Registration of Successors.* The Commission is proposing a successor rule for government securities broker-dealers similar to that already applicable to broker-dealers registered under section 15(b) of the Act.[18] The rule is intended to provide for a smooth transition when one government securities broker-dealer succeeds to the business of another government

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[11] Section 15C(a) (1) (B).

[12] Form BD is the form filed by an applicant to become registered pursuant to section 15(b) of the Exchange Act. *See* Rule 15b1–1. In addition, intrastate nonbank municipal securities dealers required to register under Section 15B(a) file an application for registration with the Commission on Form BD. *See* Rule 15Ba2–2. Municipal securities dealers that are banks or separately identifiable departments or divisions of banks are not brokers or dealers because of the exception for banks contained in the section 3(a)(4) definition of broker and the section 3(a)(5) definition of dealer. These municipal securities dealers are required to register with the Commission under section 15B and file an application for registration on Form MSD. *See* Rule 15Ba2–1.

[13] In 1975 the Commission adopted Form BD as a uniform form in order to enable broker-dealer applicants to file a single form for registration as a broker-dealer with the Commission, the states, and the self-regulatory organizations. *See* Securities Exchange Act Rel. No. 11424 (May 26, 1975), 40 FR 30634. Although the amendments facilitated the use of a single form, duplicative filing requirements remained. *See* Securities Exchange Act Rel. No. 20020 (July 28, 1983), 48 FR 36115. In 1983 the Commission amended Form BD to reduce those duplicative registration requirements. In addition, the revisions made Form BD and Form BDW, the form used for broker-dealer withdrawal from registration, compatible with the NASD's Central Registration Depository ("CRD"). The CRD provides a computer database that maintains current registration information for every broker-dealer that is a member of the NASD or registered with a state that participates in the CRD system. *See* Securities Exchange Act Rel. Nos. 20406 (Nov. 22, 1983), 48 FR 54436; 22468 (Sept. 26, 1985), 50 FR 41687 ("1985 Release"); 23646 (Sept. 26, 1986), 51 FR 35655.

[14] For example, section 15C of the Exchange Act incorporates by reference the provisions of section 15(b) of the Exchange Act to permit the Commission to deny an applicant's registration if it finds that the applicant has been convicted of committing certain crimes, such as bribery, perjury or burglary within the preceding 10 years.

[15] *See also* Rules 15Ba2–2(c) and 15Ba2–1(b).

[16] 17 CFR 400.5.

[17] Under the Act, the Secretary of the Treasury is to establish capital adequacy requirements for government securities broker-dealers. The proposed rule, therefore, differs from Rule 15b1–2 because it requires information concerning compliance with capital standards as established by the Secretary of the Treasury rather than the Commission.

[18] *See* Rule 15b1–3 and Rule 15Ba2–4. Similar successor rules also apply to investment advisers. 17 CFR 275.203–1 (c) and (d). For a more complete discussion of the successor rules *see* 1985 Release, at 16.

securities broker-dealer that is registered pursuant to section 15C(a) of the Act. In general, a broker-dealer succeeds to and continues the business of a predecessor broker-dealer when the successor broker-dealer assumes substantially all the assets and liabilities of the predecessor [19] and therefore closely resembles the predecessor registered government securities broker-dealer.

Paragraph (a) of the rule applies to most instances where a new legal entity succeeds to the business of a registered government securities broker-dealer. The successor is allowed to operate under the registration of the predecessor for 75 days if it files its own complete application for registration on Form BD within 30 days of the date of the succession.[20] Paragraph (b) provides special procedures for certain changes in legal status that involve the legal creation of a new entity but no practical change in the broker-dealer—changes in date or state of incorporation, form of organization,[21] or change in the composition of a partnership. In these instances, paragraph (b) allows the new entity simply to amend the predecessor's Form BD within 30 days of the date of the succession. The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), and any other pages necessary to reflect changes in the successor government securities broker-dealer. In addition, the government securities broker-dealer would be required to comply with Rule 15Ca2–1 and file a statement of financial condition described in Rule 15Ca2–1(a).

5. *Proposed Rule 15Ca2–4: Registration as Fiduciaries.* The Commission is proposing to adopt for government securities broker-dealers substantially the same rule governing the registration of fiduciaries that applies to registered broker-dealers.[22] The proposed rule permits a duly appointed fiduciary to assume immediate responsibility for the operation of a government securities broker-dealer's business. Under the rule, the registration of a government securities broker-dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment or decree of a court of competent jurisdiction. This enables the fiduciary to continue the business of a registered government securities broker or dealer, provided that the fiduciary files with the Commission, within 10 days after entering upon the performance of his duties, a statement setting forth substantially the same information required by Form BD.

6. *Proposed Rule 15Ca2–5: Consent to Service of Process To Be Furnished by Non-Resident Government Securities Brokers or Government Securities Dealers and by Non-Resident General Partners or Managing Agents of Government Securities Brokers or Government Securities Dealers.* The Commission is proposing a rule governing service of process for non-resident government securities broker-dealers that is similar to that applied to non-resident registered broker-dealers.[23] Generally, this rule provides that every non-resident government securities broker-dealer applying for registration pursuant to section 15C(a)(1)(A) must provide the Commission with a written irrevocable consent and power of attorney. This consent and power of attorney designates the Commission as an agent upon whom may be served any papers in connection with actions arising from the government securities broker or dealer's government securities business, that are subject to the jurisdiction of the United States and that accrue while the government securities broker or dealer is registered with the Commission.[24] The Rule requires that the applicant stipulate to be bound by the service of process upon the Commission as if personal service had been made. Paragraph (b)(1) of the Rule provides that registered government securities broker-dealers that become non-residents must file their consent within 30 days.

Pursuant to Rule 15b1–5, the Commission prescribed a series of forms to be used by non-resident broker-dealers.[25] The Commission is not prescribing specific forms under Rule 15Ca2–5; nevertheless, an appropriate form to satisfy the requirements of the Rule would be one of those used for Rule 15b1–5 that is modified to apply to a government securities broker-dealer registered pursuant to section 15C(a)(1)(A).

Unlike Rule 15b1–5, proposed Rule 15Ca2–5 does not grant registered government securities brokers or dealers or those whose registrations are pending when the Rule becomes effective additional time in which to file the consents and powers of attorney.[26] Non-resident government securities brokers or dealers that may have already registered would have done so pursuant to section 15(b) of the Exchange Act and the rules thereunder. The consent and power of attorney would have been filed in connection with their original application for registration. Therefore, the Commission believes that these provisions are unnecessary in the proposed rule.

7. *Proposed Rule 15Cc1–1: Withdrawal From Registration.* Proposed Rule 15Cc1–1 provides that, in order for a government securities broker-dealer to withdraw its registration under section 15C of the Exchange Act, it must file notice of withdrawal from registration with the Commission on Form BDW.[27] Registered broker-dealers withdrawing from registration under other provisions of the Exchange Act are required to file the same notice.[28] On October 7, 1986 the Commission proposed largely technical revisions to Form BDW that are intended to simplify the form and reduce the regulatory burden on broker-dealers filing Form BDW.[29] The

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[19] The successor rule cannot be used by a government securities broker-dealer to eliminate a substantial liability. *See* 1985 Release, at 17.

[20] The predecessor must file a Form BDW indicating it is withdrawing from business.

[21] Rule 15b1–3(b) as revised in 1986 contained a typographical error causing the phrase "form of organization" to read as "form or organization." The Commission intended Rule 15b1–3(b) to refer to "form *of* organization" and interprets the Rule in this manner.

[22] *See* Rule 15b1–4 and 15Ba2–5 concerning broker-dealers registered pursuant to section 15(b) and section 15B, respectively.

[23] *See* Rule 15b1–5.

[24] Under the proposed rule, the government securities broker-dealer's consent and power of attorney relate to causes of action that accrue between the time the government securities broker or dealer becomes registered and when its registration is cancelled or revoked or when a notice to withdraw from registration (Form "BDW") becomes effective. *See* Rule 15Ca2–5(a). The cut-off date in proposed Rule 15Ca2–5 differs slightly from that in Rule 15b1–5 which relates to causes of action accruing up until the Commission receives a broker-dealer's Form BDW. Because a broker-dealer's withdrawal does not become effective for 60 days from the date the Form BDW is filed, or a longer time if proceedings are instituted pursuant to section 15C, the Commission believes that Rule 15Ca2–5 should provide for causes of action that may accrue between the time a government securities broker-dealer files its Form BDW and the date that notice becomes effective.

[25] *See* Forms 7–M, 8–M, 9–M, and 10–M.

[26] *See* Rule 15b1–5(b) (1) and (2).

[27] Form BDW must be filed only if an entity is completely ceasing its securities business; if an entity is a registered broker-dealer and is ceasing its government securities activities but continuing other securities activities, it must file a notice on Form BD to reflect this change. *See* proposed Rule 15Ca1–1.

[28] *See* Rule 15b6–1 and rule 15Bc–3.

[29] *See* Securities Exchange Act Rel. No. 23946 (September 26, 1986), 51 FR 35655.

proposed rule does not affect those proposed Form BDW revisions.

II. Proposed Revisions to Form BD.[30]

The Commission proposes to modify Form BD for use as a registration form by government securities broker-dealers by adding a new Item 12. New Item 12 requires an applicant to indicate whether it is applying for registration solely as a government securities broker or dealer. The new Item 12 will enable the Commission, regulatory authorities, and the public to identify government securities brokers or dealers registering pursuant to section 15C(a)(1)(A). In addition, this identification will facilitate the Commission's determination of the broker-dealer's compliance with other applicable requirements.[31]

The Commission also proposes to revise Form BD so that broker-dealers registered or applying for registration pursuant to sections 15 and 15B may use it to notify the Commission of their government securities activities. These broker-dealers would file notice on Form BD by answering "yes" to new Item 13A, indicating they are acting as a government securities broker or dealer. After the effective date of the Act, broker-dealers registered pursuant to sections 15(b) and 15B that have conducted a government securities business also must notify the Commission when they cease their government securities activities.[32] Under the proposed amendments, notice would be filed by answering "yes" to Item 13B, indicating they are ceasing their government securities activities.

Broker-dealers registered with the Commission will have until July 25, 1987, to file this notice with the Commission. Registered broker-dealers that become government securities brokers or dealers after that date will be required pursuant to Rule 15Ca1–1 to notify the Commission on the date they begin acting as a government securities dealer and within thirty days after ceasing these activities.

Depending on their volume of government securities business, broker-dealers filing notice of government securities activities may also have to amend their Form BD to reflect a change in Item 10. Item 10 requires the applicant to check boxes indicating the types of business it is or will be engaged in if a type of business accounts for 10 percent or more of the applicant's annual revenue from the securities or advisory business. Current Item 10 provides a box only for government securities dealer activities. The Commission is proposing to add an additional box for government securities brokers.

III. Proposed Revisions to Rule 15b2–2: Inspection of Newly Registered Brokers and Dealers

Section 15(b)(2)(C) requires the Commission or the responsible self-regulatory organization to conduct an inspection of a broker-dealer [33] within six months [34] of granting its registration in order to determine whether the broker-dealer is operating in conformity with the federal securities laws. Pursuant to this requirement the Commission adopted Rule 15b2–2. The Commission is proposing revisions to Rule 15b2–2 to provide for the inspection of newly registered government securities broker-dealers. The Rule requires the responsible self-regulatory organization to conduct inspections of newly registered broker-dealers within six months to a year [35] to determine compliance with "applicable financial responsibility rules." The revisions clarify the applicability of the Rule to government securities broker-dealers registered pursuant to section 15C(a)(1)(A) and define "applicable financial responsibility rules" to include any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(1).

Cost of Benefits. While there are no direct fees required to file Form BD with the Commission, government securities broker-dealers may incur costs associated with the proposed rules to the extent that the preparation of the required statements becomes time-consuming or requires the assistance of legal or accounting advice. These costs are difficult to estimate; therefore, the Commission solicits comments on the specific costs firms would face in complying with the proposed rules. The Commission is particularly interested in comments that identify the sources and expected amount of expenditure needed to meet the requirements of the individual rule proposals as well as suggestions for alternative, less costly methods to comply effectively with the intent of the Act.

The benefits of the proposed rules may be viewed in terms of how effectively they implement the intent of Congress to increase confidence in the government securities market and to reduce risks by having U.S. government securities brokers and dealers register or file notice with the appropriate regulatory authority.

The Commission believes that investor protection will be enhanced by the proposed registration requirements, because they should provide an adequate basis for determining whether a firm meets minimum industry standards for operating as a government securities broker or dealer. In the case of succession or withdrawal, the rules would allow for a smooth, continuous transition in management and, as with withdrawal applications, enable the Commission to determine if any further action is necessary. Another major benefit of the proposed registration procedure is that it implements the requirements of the Act while using a pre-existing method and a standard form familiar to the broker-dealer industry and that is also used by the states and the NASD.

The Commission solicits comments on the costs and benefits of the proposed rules and form changes. The Commission is particularly interested in comments addressing the identification of other sources of costs and benefits and the quantification of costs and benefits to the proposed amendments.

IV. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a "significant economic impact on a

[30] In addition to the new Items described below, the Commission is proposing amendments to the instructions page to describe the procedure for registering with the Commission as a government securities broker-dealer and for registered broker-dealers to provide notice of their government securities activities.

[31] Under the Act, government securities brokers and dealers may be subject to different regulations than broker-dealers registered under Section 15(b). For example, a firm that conducts a business solely in government securities, and therefore registers with the Commission pursuant to section 15C(a)(1)(A), would not be a member of the Securities Investor Protection Corporation ("SIPC"). *See* S. Rep. No. 426, 99th Cong., 2d. Sess. 25 (1986). In addition, under section 15C(b) the Secretary of the Treasury may adopt for government securities broker-dealers rules governing their books and records and capital requirements that may differ from the rules applicable to broker-dealers generally. Finally, under section 15A(f) of the Act the NASD's rulemaking authority over transactions by government securities broker-dealers in government securities is generally limited to examining for and enforcing compliance with applicable provisions of the Act. The NASD, however, is specifically empowered to adopt rules to prohibit fraudulent, misleading, deceptive, and false advertising.

[32] Section 15C(a)(1)(B).

[33] Government securities broker-dealers that are required to register pursuant to section 15C(a) are broker-dealers, and are therefore subject to the Rule.

[34] The Commission may delay inspection of any class of brokers or dealers for up to six months. *See* section 15(b)(2)(C).

[35] Rule 15b2–2(c) and (d).

substantial number of small entities." [36] The Chairman of the Commission has certified pursuant to that Act that the proposed amendments to Rule 15b2–2, if adopted, will not have a significant economic impact on a substantial number of small entities. Rule 15b2–2 provides for inspections of newly registered broker-dealers by the NASD and the exchanges. Most government securities broker-dealers will belong to the NASD, therefore, the NASD will incur most of the costs associated with the proposed amendments to Rule 15b2–2. The NASD, however, is not a small organization under § 601(4) of the Regulatory Flexibility Act because the NASD is considered "dominant in its field."

Under Rule 0–11(e) of the Exchange Act, the Commission defines a small organization, when used with reference to an exchange as any exchange that has been exempted from the reporting requirements of Rule 11Aa3–1. There is only one exchange, the Spokane Exchange, that falls within the definition of small organization. It is not expected that government securities broker-dealers will join the Spokane Exchange. Therefore, it is unlikely that there will be any economic impact on an exchange that is a small entity.

The proposed amendments to Rule 15b2–2 may result in indirect costs to government securities broker-dealers that are small entities. The costs, however, of being inspected by the NASD or the exchanges are minimal and will not have a significant economic impact on such government securities broker-dealers.

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 15Ca1–1, 15Ca2–1, 15Ca2–2, 15Ca2–3, 15Ca2–4, 15Ca2–5, 15Cc1–1, 15b2–2, and proposed revisions to Form BD. The Analysis notes that the objective of the rules is to implement the provisions of the Act. The Analysis utilized the Commission's Rule 0–10 under the Exchange Act, which defines small entities when used in reference to a broker-dealer. The Commission believes that the proposed rules will have a significant economic impact on a substantial number of small entities. The impact, however, has been minimized by requiring government securities broker-dealers to register using the same form as the form used for registration of other broker-dealers.

The intent of and the possible costs and benefits of each rule proposal is also discussed in the Analysis. Comments are solicited with respect to this initial regulatory analysis and the appropriateness of the current definition of a small broker-dealer for purposes of the Analysis.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Lynne G. Masters, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2848.

V. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 3, 15(b), 15C(a), and 23 thereof, 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a), and 78w, the Commission proposes to adopt §§ 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1, and to amend § 240.15b2–2 and Form BD, § 249.501 of Title 17 of the Code of Federal Regulations, in the manner set forth below.

VI. Text of Proposed Amendments

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

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

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23, 48 Stat. 901 as amended 15 U.S.C. 78w * * * Section 240.15b2–2, also issued under Secs. 3, 15 U.S.C. 78c, and 15, 15 U.S.C. 78*o*, Secs. 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1, also issued under Secs. 3, 15 U.S.C. 78c, 15C, 15 U.S.C. 78*o*–5, * * *

2. § 240.15b2–2 is amended by revising paragraphs (a) and (b) as follows:

§ 240.14b2–2. Inspection of newly registered brokers and dealers.

(a) *Definition* . For the purpose of this section the term "applicable financial responsibility rules" shall include: (1) Any rule adopted by the Commission pursuant to sections 8, 15(c)(3), 17(a), or 17(e)(1)(A) of the Act; (2) any rule adopted by the Commission relating to hypothecation or lending of customer securities; (3) any other rule adopted by the Commission relating to the protection of funds or securities; and (4) any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(1) of the Act.

(b) Each self-regulatory organization that has responsibility for examining a broker or dealer member (including members that are government securities brokers or government securities dealers registered pursuant to section 15C(a)(1)(A) of the Act) for compliance with applicable financial responsibility rules is authorized and directed to conduct an inspection of the member, within six months of the member's registration with the Commission, to determine whether the member is operating in conformity with applicability financial responsible rules.

* * * * *

Registration of Government Securities Brokers and Government Securities Dealers

3. By adding §§ 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1 after the undesignated heading above as follows:

§ 240.15Ca1–1. Notice of government securities broker-dealer activities.

(a) Every government securities broker or government securities dealer that is a broker or dealer registered pursuant to sections 15 or 15B of the Act (other than a financial institution as defined in section 3(a)(46) of the Act) shall file with the Commission written notice on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein that it is a government securities broker or government securities dealer. After July 25, 1987, every broker or dealer subject to this paragraph shall file notice that it is a government securities broker or government securities dealer prior to or on the date it begins acting as a government securities broker or government securities dealer.

(b) Every government securities broker or government securities dealer required to file notice under paragraph (a) of this section shall file with the Commission written notice on Form BD in accordance with the instructions

[36] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this certification, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Rel. No. 18452 (January 28, 1982), 47 FR 5215. An exchange generally is a "small business" or "small organization" if it has been exempted from the reporting requirements of 17 CFR 240.11Aa3–1. *See* Rule 0–10(e). A broker or dealer generally is a "small business" or "small organization" if it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d) or if not required to file such statements a broker or dealer that had total capital, net worth plus subordinated liabilities, of less than $500,000 on the last business day of the preceding fiscal year. *See* Rule 0–10(c), 17 CFR 240.0–10(c).

contained therein when it ceases to be a government securities broker or government securities dealer. Notice shall be filed within 30 days after the date the broker or dealer has ceased acting as a government securities broker or a government securities dealer.

§ 240.15Ca2–1. Application for registration as a government securities broker or a government securities dealer.

(a) An application for registration pursuant to section 15C(a)(1)(A) of the Act of a government securities broker or government securities dealer shall be filed with the Commission on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein.

(b) Every amendment to Form BD filed by a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act shall constitute a "report" within the meaning of sections 15, 15C, and 32(a) of the Act.

§ 240.15Ca2–2. Statement of financial condition to be filed with application for registration as a government securities broker or government securities dealer.

(a) Every government securities broker or government securities dealer who files an application for registration on Form BD pursuant to Rule 15Ca2–1 shall file with such application a statement of financial condition as of a date no more than 30 days after the date on which such statement is filed and as of a later date reflecting any material change, if there has been a material change. Such statement of financial condition shall: (1) Be in such detail as will disclose the nature and amount of assets and liabilities and the net worth of such government securities broker or government securities dealer; (2) contain a schedule listing the securities of such government securities broker or government securities dealer or in which such government securities broker or government securities dealer has an interest and, if a ready market for the security exists, valuing the security at the market price with an indication of the market on which such valuation is made, and (3) contain a computation made in accordance with the capital requirements applicable to the business of such government securities broker or government securities dealer under the capital rules established by the Secretary of the Treasury. For purposes of this paragraph (a), if the government securities broker or government securities dealer is a soler proprietorship, the personal assets and liabilities of such government securities broker or government securities dealer shall be included in the computations of its net worth and the Treasury capital requirements pursuant to clauses (1) and (3) hereof in testing compliance with the applicable capital rules.

(b) The schedule of securities furnished as a part of such statement of financial condition shall be deemed confidential if bound separately from the balance of such statement, except that it shall be available for official use by any official or employee of the United States or any state, by any national securities exchange or national securities association of which the person filing such statement is a member, or with whom the person is seeking to be associated, and by any other person to whom the Commission authorizes disclosure of such information as being in the public interest.

(c) Every government securities broker or government securities dealer who files an application for registration on Form BD pursuant to Rule 15Ca2–1 shall file with such application a statement that shall include the following:

(1) A representation that the capital of such government securities broker or government securities dealer has been contributed, and that such amount of capital will continue to be devoted to its business as government securities broker or government securities dealer, and a description of the nature and source of such capital, and

(2) A representation that adequate arrangements have been made by such government securities broker or government securities dealer for the establishment and maintenance of adequate facilities and financing required for the carrying on of its business as a government securities broker or government securities dealer, and an undertaking that such government securities broker or government securities dealer will continue to maintain facilities and financing adequate for its business, and a detailed statement thereof, including a discussin of the nature of such arrangements with respect to (i) personnel, (ii) physical facilities, (iii) the maintenance and preservation of books and records as required by applicable provisions of law and any applicable rules of any national securities exchange or national securities association of which such government securities broker or government securities dealer is a member, including information concerning any arrangements made for the adequate performance of these functions and duties with a bookkeeping service company or data processing service company, or otherwise, and (iv) the methods and procedures to be employed by such government securities broker or government securities dealer for the purpose of supervising the activities of persons associated with it, and

(3) A statement describing the arrangements made for the obtaining of the funds required for the operation of its business for the first year of operations after registration, and the uses to which such funds will be put, stating in appropriate detail the expenses expected to be incurred for such first year of operations after registration; and setting forth the arrangements made, if any, for the obtaining of additional funds if such funds should become necessary.

(d) Attached to each of the statements required by this rule shall be an oath or affirmation that the information contained therein is true and correct to the best knowledge and belief of the person making such oath or affirmation. The oath or affirmation shall be made before a person duly authorized to administer such oath or affirmation. If the government securities broker or government securities dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer.

(e)(1) The provisions of this rule shall not apply to a government securities broker or government securities dealer succeeding to and continuing the business of a registered government securities broker or government securities dealer, provided that such successor government securities broker or government securities dealer files with the application on Form BD a statement of financial condition as specified in paragraph (a) of this section.

(2) The information required pursuant to paragraphs (a)(2), (c)(2)(i), (c)(2)(ii), and (c)(3) of this rule shall not apply to a government securities broker or government securities dealer that has been acting continuously as a government securities broker or government securities dealer for one or more years prior to July 25, 1987, and who files with its application for registration a representation that it has been acting as a government securities broker or dealer as of a date prior to July 25, 1986.

(3) The Commission may, upon written request or upon its own motion, exempt from the provisions of this rule any government securities broker or government securities dealer, either unconditionally or on specified terms or conditions, as it deems necessary or

appropriate in the public interest or for the protection of investors.

(4) The statement of financial condition required by this rule shall be deemed a part of the application for registration within the meaning of the provisions of sections 15, 15C and 32(a) of the Act authorizing the Commission to prescribe the form of application for registration of a government securities broker or government securities dealer and prohibiting the filing of a false application.

§ 240.15Ca2–3. Registration of successor to registered government securities broker or government securities dealer.

(a) If a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 75 days after such succession, provided that an application for registration on Form BD (§ 249.501 of this chapter) is filed by such successor within 30 days after such succession.

(b) Notwithstanding the proviso to paragraph (a) of this rule, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the registration of the successor may be effected by amending within 30 days of the succession the Form BD of the predecessor to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor. This successor government securities broker or government securities dealer also must file with its Form BD amendment the statements of financial condition specified in Rule 15Ca2–2.

§ 240.15Ca2–4 Registration of fiduciaries.

The registration of a government securities broker or government securities dealer pursuant to section 15C of the Act shall be deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such registered government securities broker or government securities dealer, provided that such fiduciary files with the Commission, no more than 30 days after entering upon the performance of its duties, a statement setting forth as to such fiduciary substantially the information required by Form BD.

§ 240.15Ca2–5. Consent to service of process to be furnished by non-resident government securities brokers or government securities dealers and by non-resident general partners or managing agents of government securities brokers or government securities dealers.

(a) Each non-resident government securities broker or government securities dealer applying for registration pursuant to section 15C(a)(1)(A) of the Act, each non-resident general partner of a government securities broker or government securities dealer partnership that is applying for such registration, and each non-resident managing agent of any other unincorporated government securities broker or government securities dealer that is applying for registration, shall furnish to the Commission, in a form acceptable to the Commission, a written irrevocable consent and power of attorney that: (1) designates the Securities and Exchange Commission as an agent of such government securities broker or government securities dealer upon whom may be served any process, pleadings, or other papers in any civil suit or action brought in any appropriate court in any place subject to the jurisdiction of the United States, with respect to any cause of action (i) that accrues during the period beginning when such government securities broker or government securities dealer becomes registered pursuant to section 15C(a)(1)(A) of the Act and ending either when such registration is cancelled or revoked, or when a notice filed by such government securities broker or government securities dealer to withdraw from such registration becomes effective, whichever is earlier, (ii) that arises out of any activity, in any place subject to the jurisdiction of the United States, occurring in connection with the conduct of the business of such government securities broker or government securities dealer, and (iii) that is founded, directly or indirectly, upon the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any rule or regulation under any of those Acts, and (2) stipulates and agrees that any such civil suit or action may be commenced against such government securities broker or government securities dealer by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (c) of this section and that the service as aforesaid of any such process, pleadings or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

(b) Each government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act that becomes a non-resident government securities broker or government securities dealer, and each general partner or managing agent of an unincorporated government securities broker or government securities dealer registered or applying for registration pursuant to section 15C(a)(1)(A) of the Act who becomes a non-resident after such registration or filing of an application for such registration, shall furnish such consent and power of attorney no more than 30 days thereafter.

(c) Service of any process, pleadings or other papers on the Commission under this rule shall be made by delivering the requisite number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings, or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered or certified mail to the appropriate defendants at their last address of record filed with the Commission; but any failure by the Commission to forward such a copy shall have no effect on the validity of the service made upon the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its file.

(d) For purposes of this rule the following definitions shall apply:

(1) The term "managing agent" shall mean any person, including a trustee, who directs or manages or who participates in the directing or managing of the affairs of any unincorporated organization or association that is not a partnership.

(2) The term "non-resident government securities broker or government securities dealer" shall mean: (i) In the case of an individual, one who is domiciled in or has his principal place of business in any place

not subject to the jurisdiction of the United States, (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jursidiction of the United States.

(3) A general partner or managing agent of a government securities broker or government securities dealer shall be deemed to be a non-resident if he is domiciled in any place not subject to the jurisdiction of the United States.

§ 240.15Cc1–1. Withdrawal from registration.

(a) Notice of withdrawal from registration as a government securities broker or government securities dealer pursuant to section 15C(a)(1)(A) of the Act shall be filed on Form BDW in accordance with the instructions contained therein.

(b) Except as hereinafter provided, a notice to withdraw from registration filed by a government securities broker or government securities dealer shall become effective for all matters on the sixtieth day after the filing thereof with the Commission or within such shorter period of time as the Commission shall determine. If a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to section 15C(c) to censure, place limitations on the activities, functions or operations of, suspend or revoke the registration of, such government securities broker or government securities dealer or if, before the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) Every notice of withdrawal filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C, and 32(a) of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for Part 249 continues to read, in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a. *et seq.*

5. FORM BD prescribed by § 249.501 is revised as follows: Revisions to the Instructions page, New Items 12 and 13 added, Item 10 amended. (FORM BD does not appear in the Code of Federal Regulations). The revised Form BD with the exception of Schedules A–E which are unchanged appears in the Appendix below.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

February 18, 1987.

Appendix—Form BD

Note.—This appendix will not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB No. 3235–0012
Expires May 31,1988

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, with the U.S. Securities and Exchange Commission.

How and Where to File

File Form BD and its schedules in triplicate with the Securities and Exchange Commission, Washington, D.C. 20549. Manually sign and notorize all three copies on the execution page. Keep a copy. Duplicated copies may be filed if manually signed. Copies must be made on standard size white paper, in the same size as the original.

Form BD Initial Filings—Required Statements

Rule 15b1–2 and Rule 15Ca2–2 require filing with each initial Form BD application two copies of special statements of financial condition, capital contribution, facilities, and first-year funding. (See Securities Exchange Act Release No. 9594 (May 12, 1972); Securities Exchange Act Release No. 24109 (Feb. 18, 1987).)

Successor Registration

A broker-dealer that assumes substantially all the assets and liabilities of and continues the business of a predecessor broker-dealer is a successor broker-dealer. Rule 15b1–3 and Rule 15Ca2–3 require a successor broker-dealer to file a new Form BD (or, in special instances, to amend the predecessor broker-dealer's Form BD) within 30 days. The filing must indicate on page 2 of the form that the applicant is a successor and must contain the statement of financial condition required by Rule 15b1–2 or Rule 15Ca2–1 Form BD successor filings. (See Securities Exchange Act Release No. 22468, (September 26, 1985); Securities Exchange Act Release No. 24109 (Feb. 18, 1987).)

Prohibited Broker-Dealer Names

United States Code Title 18 Section 709 makes a criminal offense of using the words "National," "Federal," "United States," "reserve," or "Deposit Insurance" in the name of a person or organization in the brokerage business, unless otherwise allowed by Federal law. If these words are used in the applicant's name, include an opinion of counsel with the Form BD explaining why the words are permitted.

BILLING CODE 8010-01-M

OMB APPROVAL
OMB Number: 3235-0012
Expires: Pending Action

Instructions for Form BD

1. Updating - By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and circle the number of the item being changed.

2. Contact Employee - The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format

   * Attach an execution page (page 1) with original manual signatures to the initial Form BD filing and each amendment to the form or Schedules A through D.

   * Type all information.

   * Give the broker-dealer and date on each page.

   * Use only the Form BD and its Schedules or a reproduction of them.

4. Definitions

   * Applicant - The broker-dealer applying on or amending this form.

   * Control - The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits is presumed to control that company.

   * Jurisdiction - Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.

   * Person - An individual, partnership, corporation or other organization.

   * Self-regulatory organization - Any national securities or commodities exchange or registered securities association, or registered clearing agency.

5. Schedule A, B and C - Individuals not required to have a Form U-4 (individual registration) in the Central Registration Depository (CRD) who are listed on Schedules A, B or C must attach page 2 of Form U-4. The applicant broker-dealer must appear in Form U-4 Item 19 or 20. Signatures are not required.

6. Schedule D - Schedule D provides additional space for explaining "Yes" answers to Form BD items, but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule E - Schedule E Amendments to report changes in Branch Offices may be submitted without an execution page.

8. Federal Information Law and Requirements - The Securities Exchange Act of 1934, Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

9. Government Securities Activities

   A. Section 15C of the Exchange Act requires government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting only a government securities business.

   B. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

   C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

FORM BD PAGE 1 (Execution Page) (revised 1/86)

UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION

OFFICIAL USE

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT FIRM CRD NO.: _____

1 Exact name, principal business address, mailing address, if different, and telephone number of applicant:

A. Full name of applicant (If sole proprietor, state last, first, and middle name) B. IRS Empl. Ident. No.:

C. Name under which business is conducted, if different:

D. If name of business is hereby amended, state previous name:

E. Firm main address:

(Number and Street) (City) (State) (Zip Code)

Mailing Address, if different:

F. Telephone Number:

(Area Code) (Telephone Number) G. _____ CONTACT EMPLOYEE

EXECUTION. For the purpose of complying with the laws of the State(s) I have designated in Item 2 relating to either the offer or sale of securities or commodities, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

Date _____ Name of Applicant

By _____
Signature and Title

Subscribed and sworn before me this _____ day of _____, 19____ by _____

My commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle item(s) being amended.

DO NOT WRITE BELOW THIS LINE FOR OFFICIAL USE ONLY

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 2 Applicant Name. _____

Date _____ Firm CRD No.. _____

OFFICIAL USE

2. To be registered with the following: (designate) "1" Initial Registration, "2" Pending, "3" Already Registered. If any license, registration or membership listed herein is of a restricted nature, explain fully on Schedule D.

☐ SECURITIES & EXCHANGE COMMISSION

SRO: ☐ ASE ☐ BSE ☐ CBOE ☐ CSE ☐ MSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ OTHER (Specify) _____

JURISDICTION:
☐ AL ☐ AK ☐ AZ ☐ AR ☐ CA ☐ CO ☐ CT ☐ DE ☐ DC ☐ FL ☐ GA ☐ HI ☐ ID
☐ IL ☐ IN ☐ IA ☐ KS ☐ KY ☐ LA ☐ ME ☐ MD ☐ MA ☐ MI ☐ MN ☐ MS ☐ MO
☐ MT ☐ NE ☐ NV ☐ NH ☐ NJ ☐ NM ☐ NY ☐ NC ☐ ND ☐ OH ☐ OK ☐ OR ☐ PA
☐ RI ☐ SC ☐ SD ☐ TN ☐ TX ☐ UT ☐ VT ☐ VA ☐ WA ☐ WV ☐ WI ☐ WY ☐ PR

3. Date of formation _____ Place of filing _____ for

☐ Corporation Complete Schedule A ☐ Partnership Complete Schedule B ☐ Sole Proprietorship Complete Schedule C
☐ Other (specify) _____ Complete Schedule C

4. If applicant is a sole proprietor, state full residence address and social security number

Social Security No. _____

(Number and Street) (City) (State) (Zip Code)

5. Is applicant a successor to a registered broker-dealer? YES ☐ NO ☐
If yes, explain on Schedule D. . . . . .

If yes, state

A. Date of Succession _____

B. Full name, IRS Empl Ident No SEC File No and Firm CRD No of predecessor broker-dealer

Name _____

IRS Empl Ident No. _____ FIRM CRD No _____

SEC File Number _____

6. A. Does any person not named in Item 1 or Schedules A, B or C, directly or indirectly through agreement or otherwise, exercise or have the power to exercise control over the management or policies of applicant? YES ☐ NO ☐ 1

(If yes, state on Schedule D the exact name of each person (if individual, state last, first, and middle names) and describe the agreement or other basis through which such person exercises or has the power to exercise control.)

B. Is the business of applicant wholly or partially financed, directly or indirectly, by any person not named in Item 1 or Schedules A, B or C, in any manner other than by (1) a public offering of securities made pursuant to the Securities Act of 1933, (2) credit extended in the ordinary course of business by suppliers, banks and others, or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR §240.15c3-1)? YES ☐ NO ☐ 2

(If yes, state on Schedule D the exact name (last, first, middle) of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 3 Applicant Name _____ Date _____ Firm CRD No. _____ OFFICIAL USE

7 ***Definitions***

- **Control affiliate** – An individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant. Included are any employees identified in Schedules A,B or C of this form as exercising control. Excluded are any employees who perform clerical, administrative, support or similar functions; or who, regardless of title, perform no executive duties or have no senior policy making authority.
- **Investment or investment-related** – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
- **Involved** – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

	YES	NO	
A. In the past ten years has the applicant or control affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") to:			
(1) a felony or misdemeanor involving: investment or an investment-related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion?	☐	☐	3
(2) any other felony?	☐	☐	4
B Has any court			
(1) In the past ten years enjoined the applicant or a control affiliate in connection with any investment-related activity?	☐	☐	5
(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?	☐	☐	6
C Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever			
(1) found the applicant or a control affiliate to have made a false statement or omission?	☐	☐	7
(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statues?	☐	☐	8
(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐	9
(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities?	☐	☐	10
D Has any other Federal regulatory agency or any state regulatory agency			
(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest unfair, or unethical?	☐	☐	11
(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes?	☐	☐	12
(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐	13
(4) in the past ten years entered an order against the applicant or a control affiliate in connection with investment-related activity?	☐	☐	14
(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities?	☐	☐	15
(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant?	☐	☐	16

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 4 Applicant Name: _____ Date _____ Firm CRD No. _____ OFFICIAL USE

	YES	NO	
E Has any self-regulatory organization or commodities exchange ever			
(1) found the applicant or a control affiliate to have made a false statement or omission?	☐	☐	17
(2) found the applicant or a control affiliate to have been involved in a violation of its rules?	☐	☐	18
(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?	☐	☐	19
(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities?	☐	☐	20
F Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud?	☐	☐	21
G Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item?	☐	☐	22
H Has a bonding company denied, paid out on, or revoked a bond for the applicant?	☐	☐	23
I Does the applicant have any unsatisfied judgments or liens against it?	☐	☐	24
J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun?	☐	☐	25

Item 7 Instructions

If a "yes" answer on Item 7 involves:

- the applicant broker-dealer, or an individual without a Form U-4 (individual registration) in the CRD, give the details on Schedule D.
- an individual with a Form U-4 (individual registration) in the CRD, attach any necessary Form U-4 amendments to the Form BD. The CRD will update the Forms U-4 and BD.

For each "yes" to Item 7, give the following details of any court or regulatory action:

- the broker-dealer and individuals named,
- the title and date of the action,
- the court or body taking the action, and
- a description of the action.

	YES	NO	
8. Does applicant:			
A. Have any arrangement with any other person, firm or organization under which			
(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization?	☐	☐	26
(2) Such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR §240.15c3-3) holds or maintains funds or securities of applicant or of any of its customers?	☐	☐	27
B. Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer?	☐	☐	28
(If the answer to any question of Item 8 is "yes," furnish as to each such arrangement the full name and principal business address of the other person, firm, or organization, and the summary of each such arrangement on Schedule D.)			
9. Does applicant control, is applicant controlled by, or is applicant under common control with, directly or indirectly, any partnership, corporation, or other organization engaged in the securities or investment advisory business?	☐	☐	29
(If "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. See instructions for definition of control.)			

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 5 Applicant Name _____

Date _____ Firm CRD No. _____

OFFICIAL USE

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category which accounts for or is expected to account for less than 10% of annual revenue from the securities or investment advisory business.

A. Exchange member engaged in exchange commission business	☐	EMC
B. Exchange member engaged in floor activities	☐	EMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐	IDM
D. Broker or dealer retailing corporate securities over-the-counter	☐	RDR
E. Underwriter or selling group participant (corporate securities other than mutual funds)	☐	USG
F. Mutual fund underwriter or sponsor	☐	MFU
G. Mutual fund retailer	☐	MFR
H. 1. U.S. government securities dealer	☐	GSD
2. U.S. government securities broker	☐	GSB
I. Municipal securities dealer	☐	MSD
J. Municipal securities broker	☐	MSB
K. Broker or dealer selling variable life insurance or annuities	☐	VLA
L. Solicitor of savings and loan accounts	☐	SSL
M. Real estate syndicator	☐	RES
N. Broker or dealer selling oil and gas interests	☐	OGI
O. Put and call broker or dealer or option writer	☐	PCB
P. Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐	SIA
Q. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐	NPS
R. Investment advisory services	☐	IAD
S. Broker or dealer selling tax shelters or limited partnerships	☐	TAP
T. Other (give details on Schedule D)	☐	OTH

	YES	NO	
11. A. Does applicant effect transactions in commodity futures, commodities, commodity options as a broker for others or dealer for its own account?	☐	☐	30
B. Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D.)	☐	☐	31
12. Is applicant applying for registration solely as a government securities broker or dealer?	☐	☐	32
13. Notice of Government Securities Activities			
A. Is applicant acting or intending to act as a government securities broker or dealer? (Do not answer "Yes" if applicant answered "yes" to Question 12.)	☐	☐	33
B. Is applicant ceasing its activities as a government securities broker or dealer? (Do not answer "Yes" unless previously answered "yes" to Question 13A.)	☐	☐	34

[FR Doc. 87–3883 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–C

FEDERAL RESERVE SYSTEM

[Docket No. R-0596]

Financial Institutions Acting as Government Securities Brokers or Government Securities Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Under section 15C(a)(1)(B) of the Securities Exchange Act of 1934, 15 U.S.C. 78o–5(a)(1)(B), as amended by the Government Securities Act of 1986 (Pub. L. 99–571), all financial institutions that act as government securities brokers or government securities dealers must notify their designated federal supervisory agencies of their broker/dealer activities, unless exempted from the notice requirement by Treasury Department regulation. The Board of Governors has the responsibility for establishing the form for this notice, as well as the form of the notice to be filed by financial institutions that are no longer acting as government securities brokers or government securities dealers. In discharging these responsibilities, the Board is proposing to adopt Form G–FIN (notification by financial institution of status as government securities broker or dealer) and Form G–FINW (notification by financial institution of termination of status as government securities broker or dealer).

These forms are also being submitted for review and approval under the Paperwork Reduction Act (chapter 35 of 44 U.S.C.) and OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). Copies of the proposed forms and supporting documents are available from the Board clearance officer listed below.

DATES: Comments must be received by March 27, 1987.

ADDRESSES: Comments, which should refer to Docket No. R–0596, should be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments may also be sent to Mr. Robert Neal, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert S. Plotkin, Assistant Director (202–452–2782), or Susan S. Meyers, Senior Securities Regulation Analyst (202–452–2781), Division of Banking Supervision and Regulation; or, for the hearing impaired *only:* Telecommunications Device for the Deaf (202–452–3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federl Reserve System. Federal Reserve Paperwork Clearance Officer: Nancy Steele, Division of Research and Statistics (202–452–3822). Interested parties may also contact the OMB Desk Officer, Robert Neal (202–395–6880).

SUPPLEMENTARY INFORMATION: The Board is proposing to prescribe forms G–FIN and G–FINW as the vehicles for financial institutions to submit the notices of status as government securities brokers and government securities dealers required by the Government Securities Act of 1986, 15 U.S.C. 78o–5(a)(1)(B). All financial institutions (generally federal and state chartered commercial banks, foreign banks, savings banks, and savings and loan associations, but not credit unions) that act or cease to act as government securities brokers or government securities dealers are required by section 78o–5(a)(1)(B) to file these notices with their appropriate regulatory agencies unless exempted from the notice requirement by Treasury Department rule. Financial institutions that are currently acting as government securities brokers or government securities dealers and not otherwise exempt must file a notice on Form G–FIN by July 25, 1987. Financial institutions that intend to engage in these activities after that date must file a notice prior to commencement of these operations.

In general, the appropriate regulatory agency for national banks is the Comptroller of the Currency; for state member banks, the Board of Governors of the Federal Reserve System; for insured non-member state banks, the Federal Deposit Insurance Corporation; for savings and loan associations, the Federal Home Loan Bank Board; and for non-federally insured financial institutions, the Securities and Exchange Commission. A foreign bank should refer to section 3(a)(34) of the Securities Exchange Act (15 U.S.C. 78c(a)(34)) as amended by section 102 of the Government Securities Act to determine its appropriate regulatory agency.

In a related action the Treasury Department is proposing rules under the Government Securities Act that, among other things, establishes exemptions from the notice requirement for certain classes of financial institutions. (See proposed 17 CFR Part 401.) In addition, the Treasury Department is proposing to require the filing of an amendment to the notice if any information contained therein becomes inaccurate. (See proposed 17 CFR 400.5(b).)

Reference to the Forms G–FIN and G–FINW will be at 17 CFR 449.1 and 449.2.

Board of Governor of the Federal Reserve System February 23, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–4043 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

federal register

Wednesday,
February 25, 1987

Part VI

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1496

Procurement of Processed Agricultural Commodities for Donation Under Title II, Pub. L. 480; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

Procurement of Processed Agricultural Commodities for Donation Under Title II, Pub. L. 480

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations applicable to the procurement by the Commodity Credit Corporation (CCC) of processed agricultural commodities for donation under Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), as amended. The amendment provides that CCC will determine lowest landed cost on a U.S. flag basis for the quantity of Title II, Pub. L. 480 commodities required to be shipped on U.S. flag vessels. The purpose of this amendment is to provide a reasonable and practicable procedure for complying with cargo preference requirements at the least cost to the government. The final rule also sets forth CCC's responsibilities in complying with the requirement contained in the Merchant Marine Act, 1936, as amended, regarding the minimum annual level of Title II, Pub. L. 480 cargo required to be moved through Great Lakes ports.

EFFECTIVE DATE: February 24, 1987. See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Merle Brown, Commodity Operations Division, ASCS–USDA. Telephone: (202) 447–4254 or 447–3995.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major." It has been determined that this will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A Regulatory Impact Analysis of this regulation has been prepared. Copies of the analysis are available to the public from the Director, Commodity Operations Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013.

This action will not have a significant impact specifically upon area and community development. Therefore, review as established by Executive Order 12372 was not used to assure that units of local government are informed of this action. It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Background

Pursuant to the authority contained in Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), 7 U.S.C. 1721, *et seq.*, CCC makes agricultural commodities available for donation overseas to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing countries; and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. In addition to donating the commodities, CCC is authorized to pay certain related costs including transportation charges to loading ports and ocean freight charges to foreign destinations. See 7 U.S.C. 1723.

CCC may make commodities available for donation overseas from its inventory or by procurement. Part 1496 of Title 7 of the Code of Federal Regulations sets forth the criteria that is considered by CCC in awarding contracts for the purchase of processed agricultural commodities for donation under Title II, Pub. L. 480. In awarding contracts, 7 CFR 1496.5(a) provides that the general principle of lowest landed cost (LLC) will prevail, but additional factors described therein will be considered. LLC reflects the lowest combined total cost of commodity and transportation charges to the foreign port of discharge. Thus, the LLC principle has the effect of determining the commodity supplier awarded the contract as well as the U.S. port of export of the commodity.

Shipments of Title II, Pub. L. 480 commodities are subject to the cargo preference requirements of the Merchant Marine Act, 1936. Amendments to the Merchant Marine Act, 1936, made by section 1142 of the Food Security Act of 1985 (Pub. L. 99–198, December 23, 1985), increased the minimum U.S. flag preference tonnage requirements from 50 percent to 60 percent for the 12-month period beginning April 1, 1986. This percentage requirement will increase further to 70 percent beginning April 1, 1987, and to 75 percent beginning April 1, 1988. The 1985 amendments also include a provision concerning the level of Title II, Pub. L. 480 commodities to be shipped by waterborne export through Great Lakes ports during 1986–89.

In accordance with the procurement regulations in 7 CFR Part 1496, commodity procurements by CCC for Title II, Pub. L. 480 have generally been made on an LLC basis. In most cases, this resulted in commodities being procured and allocated to ports (or port ranges) on the basis of foreign flag vessel rates since these rates are often lower than U.S. flag rates. Foreign flag and U.S. flag vessels are then contracted to carry portions or all of the cargoes allocated to these ports (or port ranges). Generally, cargo preference requirements have been met by contracting with U.S. flag vessels calling at these ports. On occasion this practice results in higher expenditures for U.S. flag carriage than is necessary to comply with cargo preference because commodities allocated on an LLC basis may not have been allocated to ports serviced by U.S. flag vessels with the least costly U.S. flag rates. The requirement for increased cargo preference carriage will exacerbate the problem. Additional Title II, Pub. L. 480 expenditure for ocean transportation reduces funds available for procuring commodities needed to meet the humanitarian purposes of the program. This practice also has generated complaints from U.S. flag vessel operators who may have available service at lower rates at ports other than the port representing LLC, foreign flag basis.

On July 21, 1986, CCC published in the **Federal Register** (51 FR 26164) a proposal to amend the Title II, Pub. L. 480 procurement regulations (7 CFR Part 1496) to provide for the procurement of processed commodities on a lowest landed cost basis using U.S. flag rates for the quantity of commodities required to be shipped on U.S. flag vessels because of cargo preference requirements. In addition, it was proposed to include a new provision in the regulation for compliance by CCC with the Great Lakes tonnage requirement contained in section 901b(c)(2)(B) of the Merchant Marine

Act, 1936, as added by section 1142 of the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. 1490, December 23, 1985.

Summary of Comments

A total of 45 comments on the proposed rule was received. Eight were from steamship lines, fifteen were from stevedore companies/warehousemen, six were from port authorities, two were from commodity processors, three were from other federal agencies, one was from a congressional office, six were from general shipping and maritime interests, and four were from city and county governments.

Thirty-eight of the commentors fully endorsed the proposal, generally citing their belief that the proposal resulted in a truer lowest landed cost procurement which would thereby increase the funds available for the purchase of Title II commodities. The remaining commentors either gave qualified support and stated their reservations, or simply expressed their concerns and, in some instances, provided suggested language to replace that contained in the proposed rule.

Determinations Based on Comments

After full consideration of all comments, it has been determined that the provision in the proposed rule regarding the use of U.S. flag vessel rates in the determination of lowest landed cost will be adopted with only minor editorial changes. Under the amended rule, CCC will determine LLC on a U.S. flag basis for the quantity of commodities required to be shipped on U.S. flag vessels with the balance of commodities procured on an LLC basis without regard to whether carriage is on a U.S. or foreign flag vessel. This final rule reflects a reasonable and practicable method of complying with cargo preference requirements in an efficient and less costly manner than under previous procedures.

It has also been determined that the final rule should adopt the Great Lakes' reserved tonnage provision of the proposed rule with an editorial change and the change described below. CCC will continually monitor the quantity of commodities moving through Great Lakes ports. The annual quantity required to be shipped through Great Lakes ports will be a factor in port allocation decisions in addition to the LLC evaluation procedure. However, CCC shall take such steps as are necessary and practicable to comply with the Great Lakes provision consistent with the cargo preference requirements contained in sections 901b and 901(b) of the Merchant Marine Act, 1936, as amended.

Discussion of Comments

1. One commodity processor commented that, under the proposal, factors determining awards will vary with each invitation thus creating an element of uncertainty in the commodity award process. Thus, the rule change would create distortions in competition. The commentor stated that processors, under present procedures, are immune from distortions in competition resulting from cargo preference compliance, and expressed concern about effects on risk management decisions, investment strategies, allocation of running time, and procurement of raw materials involving both cost and hedging strategies.

CCC believes that commodity processors are exposed to essentially the same factors and risks whether or not LLC is on a U.S. flag basis. However, we recognize that an additional uncertainty arises from the fact that the specific percentage of commodities purchased on a U.S. flag basis will vary month by month.

Under current procedures, the LLC evaluation necessarily includes consideration of ocean freight rates and availability of ocean transportation in making awards. Thus, the lowest commodity offer is not always accepted by CCC. This, in itself, distorts the competitive position of a commodity offeror. Presumably, this comment reflects the fact that the commodity processor is often in the position to offer the lowest commodity prices at a port or coastal range reflecting the lowest freight rates, While current procedures are usually foreign flag rates. While the commodity processor may then be awarded a contract by CCC, the total cost to CCC may be higher than necessary due to the requirements of cargo preference. In other words, once a seller and port of export are determined, CCC may be required to utilize U.S. flag rates at that port which could result in total landed cost higher than available through other ports with lower U.S. flag rates. In a particular procurement, CCC recognizes that the proposed revision of the LLC procedure may result in a change in coasts of export and commodity processors from what would have been the case under current procedures for U.S. flag carriage. The relative competitive position between commodity processors could possibly change on the basis of CCC's LLC cost analyses, but the new procedure is necessary for CCC to lower its total costs for the purchase and transportation of Title II processed commodities. This desire to lower costs should not depend upon whether one particular commodity processor or another is awarded a contract.

2. One commodity processor and two trade associations commented that the rule should be reviewed within 6 months to a year to assess the effects of the change.

CCC will continue to monitor the LLC bid evaluation process and make appropriate changes if necessary. Accordingly, mandatory review time is not deemed necessary.

3. One maritime trade association disagreed with the determination of the rule as "not major" because of its impact on the U.S. economy in general and on certain ports in particular.

CCC acknowledges that the effects of the rule will be more significant on certain entities in the country than on others. However, CCC has determined that the overall impact of the final does not fit the classification "major" as specified in Executive Order 12291, and Departmental Regulation 1512–1. Nevertheless, CCC has designated this rule as a "Reserved Nonmajor" regulation within the meaning of Departmental Regulation 1512–1, thereby assuring review at appropriate policy levels within USDA.

4. One part authority and one maritime trade association commented that the proposed rule may limit competition, thereby resulting in no cost savings. It was suggested that there is inadequate competition on all trade routes, and U.S. flag carriers will have no incentive to call at certain ports.

CCC believes that the final rule results in more competition among U.S. flag carriers than under the previous procedure since U.S. flag service on all coastal ranges will now be considered in the LLC bid evaluation process. Under current procedures, there often may be no competition between U.S. flag service since, once a port of export is determined, CCC has no choice but to utilize available U.S. flag service at that port. Under the new procedure, U.S. flag carriers will have to compete among themselves.

CCC believes that this competition will not only be in the form of freight rates, but also as to ports of call. As long as commodity prices at port and port costs are competitive, U.S. carriers will have an incentive to include various ports in their offered service.

5. Two trade associations commented on various aspects of the Cargo Preference Act and its application on the rule. The associations commented that the terms "availability," "adequacy of service," "and reasonableness of rates" should be defined, and that the rule should not be implemented until

issues such as reimbursement from the Department of Transportation for the additional cost of cargo preference is resolved.

For the purpose of this procurement regulation, the terms "availability of ocean service" and "adequacy of service" are defined in § 1496.5. CCC believes that a definition of "reasonableness of rates" relates only to availability of U.S. flag vessels for the purpose of cargo preference compliance and is beyond the scope of this regulation. Further, the implementation of a reimbursement procedure for additional cargo preference costs has no bearing on the subject matter of the proposed rule.

6. The Department of Transportation (DOT) commented that the Secretary of Transportation, not CCC, was empowered by Congress with the exclusive authority to make the relevant determinations and take the appropriate steps for assuring compliance with the annual minimum Great Lakes tonnage provision. Consequently, DOT suggested that the new § 1496.5(f) of the proposed regulation be modified to add, at the beginning thereof, "After consultation with and receipt of prior approval from the Secretary of Transportation, CCC shall . . . ."

CCC agrees that the law vests certain authorities with the Secretary of Transportation to administer the Great Lakes provision. Accordingly, the language pertaining to the Great Lakes provision provides that CCC will take the appropriate steps to comply with the Great Lakes provision in consultation with the Secretary of Transportation. CCC has not accepted DOT's suggestion regarding "prior approval" since such language implies DOT participation in, and possible veto of, each specific monthly CCC procurement decision. Such involvement is not necessary to assure proper implementation of the Great Lakes minimum tonnage provision and could add significant delays to the procurement process. CCC's consultations with DOT will include keeping DOT informed of the volume of commodities moving through the Great Lakes during the course of the year and of the possibility of having to take specific action, such as a set-aside for the Great Lakes.

7. The Saint Lawrence Seaway Development Corporation, DOT, and one maritime trade association commented that in order to satisfy the Great Lakes provision, a percentage of cargo should be set-aside for the Great Lakes on a monthly basis.

CCC will continually monitor the quantity of commodities moving through the Great Lakes ports and, if necessary, make appropriate adjustments in its LLC evaluation procedure. For example, in certain years, the Great Lakes may obtain the minimum amount of cargo through the usual allocations on an LLC basis. In other years, a cargo set-aside to the Great Lakes may be necessary for a particular month's procurement. However, in view of the uncertainties associated with determining, in advance, the monthly requirements for the procurement of Title II commodities, CCC will also need as much flexibility as possible on each monthly procurement. Also, a specific monthly set-aside does not leave room for the consideration of the statutory limitations on the Great Lakes minimum tonnage, that is, that the steps taken to comply with the Great Lakes provision will be conistent with the cargo preference requirements of the Merchant Marine Act, 1936, as amended, and without detriment to other port ranges.

8. The Agency for International Development (AID) urged CCC to provide in its preamble to the final rule a "clarification" of its procedures in complying with cargo preference requirements by including a statement that U.S. flag vessels may be declared unavailable for a particular month and that the resultant shortfall in U.S. flag tonnage need not be made up in subsequent months.

AID's suggestion deals with an aspect of compliance with cargo preference requirements that is beyond the scope of the proposed rule, which deals with lowest landed cost bid evaluations. CCC intends to further review the issue of a monthly nonavailability determination in consultation with DOT and AID, and if more flexibility is appropriate in this regard, CCC will make the necessary notification to the public.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register** in order for CCC to procure commodities in a manner that would efficiently and effectively comply with the provisions of the Merchant Marine Act, 1936, as amended. The provisions of that Act increased the minimum U.S. flag tonnage requirement from 60 percent to 70 percent on April 1, 1987. Further delay to implement the rule change will increase the government's cost and make it difficult for the government to comply with the requirements of that Act. Consequently, this rule will be effective February 24 which corresponds with the date that commodity invitations will be issued by CCC for April/May deliveries at U.S. ports. Offers in response to that invitation will be due March 9, 1987.

List of Subjects in 7 CFR Part 1496

Agricultural exports, Maritime carriers, Exports.

PART 1496—[AMENDED]

Accordingly, Part 1496 of Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1496 continues to read as follows:

Authority: Secs. 201, 202 and 203, Pub. L. 480, 83rd Cong. as amended, 68 Stat. 455 (7 U.S.C. 1721, 1722, and 1723); sec. 901b, Pub. L. 864, 83 Cong. as amended, 99 Stat. 1491 (46 U.S.C. 1241f).

§ 1496.1 [Amended]

2. Section 1496.1 is amended by removing the paragraph designation "(a)", and paragraphs (b) and (c).

3. The second and third sentences of paragraph (a), and all of paragraph (b) of § 1496.2 are revised to read as follows:

§ 1496.2 Administration.

(a) * * * The program will be administered through the Office of the Deputy Administrator, Commodity Operations, ASCS, Washington, DC and the Kansas City Commodity Office (KCCO), ASCS, Kansas City, Missouri. Procurement will be in accordance with USDA–1, "General Terms and Conditions for the Procurement of Agricultural Commodities or Services", as amended or revised, applicable provisions of the Federal Acquisition Regulations (48 CFR), and applicable purchase announcements and bid invitations.

(b) Purchases are made to fulfill commodity requests received in KCCO from AID.

4. Section 1496.3 is amended by removing paragraphs (f) and (h), redesignating paragraph (g) as paragraph (f), and revising paragraph (e) and redesignated paragraph (f) to read as follows:

§ 1496.3 Definitions.

* * * * *

(e) "Commodity Office" means the Kansas City Commodity Office, within ASCS, which is responsible for assigned inventory management, acquisition, disposition and related program activities of CCC.

(f) "Lowest landed cost" means the lowest combined total cost of the commodity plus transportation charges to the port of discharge.

5. Section 1496.5 is amended by revising paragraph (a) and adding a new paragraph (f) to read as follows:

§ 1496.5 Consideration of bids.

(a) *Lowest landed cost.* The general principle of awarding contracts that will result in the lowest landed cost will prevail. Lowest landed cost will be calculated on the basis of U.S. flag rates and service for that portion of the commodities being purchased that CCC determines is necessary and practicable to meet cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being purchased. However, the additional factors set forth in this section will be considered in awarding contracts.

* * * * *

(f) *Great Lakes ports.* In consultation with the Secretary of Transportation, CCC shall take such steps during calendar years 1986–89 as are necessary and practicable to preserve annually the percentage share or metric tonnage, whichever is lower, of Title II, Pub. L. 480 bagged, processed, or fortified commodities exported from Great Lakes ports during 1984, as determined by the Secretary of Agriculture, consistent with the cargo preference requirements of the Merchant Marine Act, 1936, as amended, and without detriment to other port ranges.

Signed at Washington, DC, on February 20, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–4064 Filed 2–24–87; 10:34 am]

BILLING CODE 3410-05-M

federal register

Wednesday
February 25, 1987

Part VII

Nuclear Regulatory Commission

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Notice

NUCLEAR REGULATORY COMMISSION

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-458]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company, for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment to the River Bend Station operating license would change the requirements to perform channel calibrations of the recirculation flow transmitters for two functions of the Average Power Range Monitor (APRM) and one function of the Reactor Coolant System Recirculation Flow from once per six months to once per 18 months.

These changes would be implemented through amending Technical Specification 3.3.1, Reactor Protection System Instrumentation, Table 4.3.1.1-1, Reactor Protection System Instrumentation Surveillance Requirements, Item 2.b, Average Power Range Monitor (APRM) Flow Biased Simulated Thermal Power—High, and Technical Specification 3.3.6, Control Rod Block Instrumentation, Table 4.3.6-1, Control Rod Block Instrumentation Surveillance Requirements, Item 2.a, APRM Flow Biased Neutron Flux-Upscale and Item 6.a, Reactor Coolant System Recirculation Flow-Upscale. The Technical Specifications presently have requirements to perform a channel calibration of these functions at least once per SA (semiannually, 6 months, 184 days). This change request permits the recirculation flow transmitters for these three (3) functions to be calibrated on an 18 month basis in accordance with the licensee's application for amendment dated August 29, 1986 as supplemented on February 19, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operations of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the possibility or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee in their February 19, 1987 letter provided a justification for the license amendment. Based on that justification as discussed below the staff concurs with the licensee that:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change in the frequency of calibration is considered within the design specification for the recirculation system and the safety analysis. The proposed change does not revise the Trip Setpoint or Allowable Value as stated in Technical Specification 3.3.1 and 3.3.6, but rather only extends the surveillance interval of the recirculation flow transmitters. The drift allowance is the only term in the setpoint determination affected by the surveillance interval. The existing Flow Biased Scram total instrument drift allowance is 3.0% NBR (Nuclear Boiler Rated) as presented in the Neutron Monitoring System Design Specification.

Based upon the methods outlined in the licensees' February 19, 1987 letter, the instrument drift is 2.2% for 18 months. The 2.2% calculated drift is lower than the allowed 3% instrument drift utilized for determination of the current Technical Specification setpoints. Therefore, the calculated drift for these instruments with an eighteen (18) month surveillance frequency is within the allowed drift used to develop the current setpoints. There is no impact on the safety analysis since credit for the flow biased trips is not taken in the Final Safety Analysis Report (FSAR). This proposed change does not involve a design change or physical change to the plant. Thus, there is no increase in the probability or consequence of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change in the frequency of calibration of flow transmitters is considered within the design specification for the recirculation system and the safety analysis, and does not involve a design change or physical change, and therefore does not alter the single failure design of the instrumentation. Thus, no new accident scenario is introduced by this revised frequency of calibration of the flow transmitters.

The proposed change to the flow transmitter surveillance period does not involve a significant reduction in a margin of safety because the change in the frequency of calibration of the flow transmitters is considered within the design specification of the recirculation system and the safety analysis. As discussed above, the design specifications for the Technical Specifications are based upon an allowed 3% instrument drift. The licensee in its February 19, 1987 letter, calculated the total loop drift over an 18 month period to be 2.2% which is within the 3% instrument drift of the design basis. There is no impact on the safety analysis since credit for the flow biased trips is not taken in the FSAR. Additionally, as delineated in the justification, the proposed change does not impact the Limiting Conditions of Operation of the TS. Thus, the margin of safety is not reduced.

The staff concurs with the above analysis. Accordingly, the staff has made a proposed determination that the application involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 27, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be flied in accordance

with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, BWR Project Directorate No. 4, Division of BWR Licensing: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 29, 1986, as amended and supplemented February 19, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Bethesda, Maryland, this 20th day of February 1987.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Acting Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 87–4009 Filed 2–24–87; 11:26 am]

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Vol. 52, No. 36–37

Wednesday, February 25, 1987

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Laws 523-5230

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3101-3208.....2
3209-3392.....3
3393-3594.....4
3595-3782.....5
3783-3996.....6
3997-4124.....9
4125-4264.....10
4265-4488.....11
4489-4590.....12
4591-4762.....13
4763-4886.....17
4887-5068.....18
5069-5270.....19
5271-5424.....20
5425-5522.....23
5523-5734.....25

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
4991 (Revoked by Proc. 5610).....5425
5610 (See U.S. Trade Representative notice).....3523, 5425
5605.....3393
5606.....3783
5607.....4489
5608.....4887
5609.....5271
5611.....5523

Executive Orders:
12582.....3395
12583.....5427
12584.....5429

Administrative Orders:
Letters:
January 5, 1987.....4125
Presidential Recommendations:
January 20, 1987.....3526

5 CFR

315.....5431
831.....3209, 3785, 5069
841.....5431
842.....4472, 4478
870.....3397
871.....3397
872.....3397
873.....3397
890.....3210, 3397
911.....4491

Proposed Rules:
432.....5463
735.....3251
870.....5466
890.....3816, 5466

7 CFR

51.....3399, 4822
226.....5525
271.....3402
272.....3402, 3410, 5434
273.....3402, 3410, 5434
275.....3402
276.....3402
400.....4591
402.....3213
403.....3213
405.....3213
409.....3213
410.....3213
411.....3213
413.....3213
414.....3213
415.....3213
416.....3213
417.....3213
418.....3213
419.....3213
420.....3213
421.....3213
422.....3213
423.....3213
424.....3213
425.....3213
427.....3213
428.....3213
429.....3213
430.....3213
431.....3213
432.....3213
433.....3213
435.....3213
436.....3213
437.....3213
438.....3213
439.....3213
440.....3213
441.....3213
442.....3213
443.....3213
444.....3213
445.....3213
446.....3213
447.....3213
448.....3213
449.....3213
450.....3213
451.....3213
454.....4592
704.....4265
907.....3214, 3411, 3787, 4763, 5273
908.....3411
910.....3787, 4763, 5273
911.....4597
915.....4597
929.....3411, 5526
945.....5529
1006.....5070
1007.....5070
1011.....5070
1012.....5070
1013.....5070
1030.....3412
1032.....3215, 3412
1033.....3412
1036.....3412
1046.....3412, 5070
1049.....3412
1050.....3412
1065.....3216
1079.....3216
1093.....5070
1094.....5070
1096.....5070
1098.....5070
1099.....5070
1468.....4275
1472.....4275
1477.....4129

1496.....5726
3402.....4712
Proposed Rules:
272.....3817
277.....3817
810.....4151
900.....3119
928.....3433, 4462
982.....5307
999.....5307
1011.....3251
1102.....4775
1106.....4775
1210.....3587, 4783
1240.....3101
1809.....4913
1900.....4913
1902.....4913
1910.....4913
1924.....4913
1941.....4913
1942.....3433
1943.....4913
1945.....4913
1951.....4913
1955.....4913
1962.....4913
1965.....4913
1980.....4913

8 CFR

242.....5616
Proposed Rules:
207.....4913

9 CFR

77.....4598
78.....4599
166.....4889
308.....3595
318.....3595
320.....3595
327.....3595
381.....3595
Proposed Rules:
160.....5308
161.....5308

10 CFR

20.....4601
50.....3788
Proposed Rules:
2.....3442
50.....3121, 3822
763.....4151

12 CFR

207.....3217
220.....3217
221.....3217
224.....3217
563.....3207, 4891
Proposed Rules:
225.....3447, 4629, 5119
523.....3450
545.....3665
563.....3665, 3669
564.....3126

14 CFR

21.....3415
25.....3415, 5422
39.....3106–3111, 3415–3424, 3595, 3599, 3793, 3997–3999, 4277–4280, 4604–4607, 4764–4766, 4892, 5074, 5436, 5438, 5530, 5531
43.....3380
61.....4846
71.....3600, 4079, 4130, 4282, 4482, 4608, 4893, 5077, 5439
73.....4130, 4894, 4895, 5077
75.....5078
91.....3380
95.....4131
97.....3426, 4609
121.....3380, 5422
127.....3380
135.....3380
211.....5440
272.....5440
302.....5440
Proposed Rules:
Ch. I.....5309
25.....5424
39.....4021, 4914, 4915, 5140, 5141, 5546
71.....4348, 4629, 4916
75.....4153
121.....5424
215.....5547
298.....5547
382.....5467
389.....5547

15 CFR

303.....3794
371.....5274
374.....3601, 5274
375.....3601
376.....5532
386.....5274
399.....3601, 5532
908.....4896

16 CFR

Ch. II.....5079
13.....3221, 3602, 5079
Proposed Rules:
13.....3252

17 CFR

Proposed Rules:
Ch. IV.....5660
1.....4154
9.....4021
33.....4154
230.....4502
240.....5711
249.....5711

18 CFR

4.....5446
37.....4896
154.....5533
157.....3223, 5533
270.....5533
271.....3112, 4137, 5533
282.....3114
284.....5533
292.....5276
375.....5276
Proposed Rules:
Ch. I.....4035
271.....4154
375.....3128
382.....3128

19 CFR

4.....3602
24.....5080

20 CFR

404.....4001
416.....4001, 4282

21 CFR

74.....3224, 5081, 5083
81.....3224, 5081, 5083
82.....5081, 5083
176.....3603
177.....4492
179.....5450
207.....4992
430.....4610
436.....4610, 4616
449.....4616
455.....4610
510.....5454
524.....4897
558.....4284, 4992
1306.....3604
Proposed Rules:
357.....5406
358.....5412
558.....4822

22 CFR

Proposed Rules:
22.....5549
51.....5549

23 CFR

Proposed Rules:
645.....4349

24 CFR

15.....3794
17.....3794
200.....3606
201.....4493
203.....3606, 4138, 4493, 5533
204.....3606
220.....3606, 5533
226.....5533
228.....3606
234.....4138, 4493
243.....3794
250.....3606
251.....3606
255.....3606
510.....3612, 4870
511.....3794, 4870
570.....3612, 4870
571.....4897
590.....4870
842.....3794
905.....4284
942.....3794
964.....3794
968.....3794, 4284
3280.....4574
3282.....3794
Proposed Rules:
203.....4507
905.....4349
968.....4349

25 CFR

38.....3428

26 CFR

1.....3615, 3795, 4822, 5084
5h.....3623
18.....3615
602.....3615, 3623, 5084
Proposed Rules:
1.....3256, 5471

27 CFR

Proposed Rules:
9.....4036, 4350
178.....4509
270.....3145
275.....3145

28 CFR

16.....3631
64.....4767
551.....3428

29 CFR

20.....3772
1600.....4902
1610.....4902
1691.....4902
2204.....5455
2616.....5101
2617.....5101
2623.....5101
Proposed Rules:
90.....5310
2200.....4917

30 CFR

206.....3796
218.....5457
731.....4244
732.....4244
761.....4244
772.....4244
773.....4244
779.....4244
780.....4244
783.....4244
784.....4244, 4860
817.....4860
906.....3632
2619.....4617
2676.....4618
Proposed Rules:
202.....4732
206.....4732
902.....4630
906.....3825
914.....4156
935.....3145, 4157
936.....5550

31 CFR

16.....5281
210.....3917
344.....3115
354.....4495

32 CFR

166.....3634
701.....5535
706.....4287, 4288, 4769, 5102, 5103, 5282
Proposed Rules:
199.....5313
557.....3273

33 CFR

3.....4771
100.....3798
117.....3225, 3639, 4771, 5536
165.....3640, 3798
Proposed Rules:
95.....4116

110.....3284
165.....4039
402.....3826, 5616

34 CFR

Proposed Rules:
75.....5142
76.....5142
270.....4850
271.....4850
272.....4850
500.....5141
745.....5142

35 CFR

119.....3799

36 CFR

62.....5458

Proposed Rules:
7.....3285, 4511, 4784
1190.....4352

37 CFR

Proposed Rules:
202.....3146

38 CFR

21.....3428

Proposed Rules:
3.....3286
21.....3288

39 CFR

10.....3225
111.....4496, 5283
233.....4496

Proposed Rules:
10.....5551

40 CFR

52.....3115–3117, 3226, 3430, 3640, 3644, 4288, 4292, 4619–4622, 4772, 4902, 5104
60.....4773, 5105
62.....3228
65.....3800
81.....3646, 3801
180.....3916, 4292, 4905, 4906, 5241
228.....5459
271.....3651, 3652
421.....3230
712.....4079
721.....4079
763.....5618
799.....3230, 4622

Proposed Rules:
52.....3452, 3670, 4631, 4785, 4789, 4921, 5316, 5552–5559
60.....4994, 5065
81.....3452, 5560
85.....4512
180.....4356
261.....3748, 5472
264.....3748
265.....3748
269.....3748
270.....3748
271.....3748
421.....4822
763.....5616

41 CFR

Ch. 201.....5113
101–17.....4293
101–26.....5536
101–40.....5536
101–47.....5542

Proposed Rules:
101–6.....4631
201–8.....3671

42 CFR

405.....4498
409.....4498
410.....4498
417.....4498
418.....4498
421.....4498
431.....4498

43 CFR

1780.....5284
3160.....5384

Proposed Rules:
3430.....5398

Public Land Orders:
6637.....3802
6638.....4774
6639.....4907

44 CFR

6.....5114
10.....5284
64.....3802
65.....3238, 3240
67.....3241, 4005

Proposed Rules:
67.....3289, 3828

45 CFR

96.....4624
1340.....3990
2005.....5542

Proposed Rules:
205.....3146
689.....4158

46 CFR

502.....4140

Proposed Rules:
386.....4356
550.....4040

47 CFR

0.....5285
1.....5285
2.....4016, 5285
15.....4016
20.....4016
21.....5285
22.....4016, 5285
23.....5285
25.....4016, 4017, 5285
62.....5285
64.....3653
73.....3654, 3661, 3804, 3805, 4018, 4499, 4500, 5114, 5285
74.....3805, 5285
90.....3661, 4016, 4500
97.....3663, 4501, 5115, 5461

Proposed Rules:
Ch. I.....3672
22.....4360
63.....5318
65.....3828
68.....5318
69.....3672, 3829
73.....3674, 3678, 3830, 3831, 5146–5148, 5472
80.....5474
90.....4041, 5149
94.....4161

48 CFR

204.....4318
252.....4318
725.....4144
728.....4144
732.....4144
733.....4144
752.....4144
1317.....3807
1352.....3807
2413.....3663
2433.....3663
2804.....4319
2807.....4319
2812.....4319

Proposed Rules:
9.....4082
15.....4084
31.....4084
45.....4086
52.....4082, 4084, 4086

49 CFR

171.....4824
172.....4824
571.....3244, 4774
1043.....3814
1050.....4626
1162.....4626
1201.....4321
1312.....3663, 4626
1313.....3663

Proposed Rules:
192.....4361
195.....4361
571.....3244, 5474, 5563
1039.....5320
1135.....4790

50 CFR

17.....4907, 5295
33.....5303
611.....3248, 3916
641.....5117
642.....4019, 4627
651.....3250
652.....4019, 4020, 5461
661.....4146
663.....4910
672.....3916
675.....3916

Proposed Rules:
17.....5068, 5150, 5155
26.....5159
216.....4365
640.....5564
642.....4924
652.....4790

LIST OF PUBLIC LAWS

Note. No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 18, 1987

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2-26-
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