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Tuesday
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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.

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WHERE: Auditorium
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WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Carolyn Payne, 202–523–3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill Federal Building
Auditorium,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8123

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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.

Rules and Regulations

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amendment to interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending Part 1650 by adding a new Subpart J which establishes a claim procedure for participants and beneficiaries who disagree with the Board over the provision of, or failure to provide, a benefit under the Thrift Savings Plan. Part 1650 sets out the Board's regulations governing the withdrawal of funds from the Thrift Savings Plan by a participant or beneficiary.

DATES: Interim rules effective August 26, 1987; comments must be received on or before April 15, 1988.

ADDRESS: Comments may be sent to John J. O'Meara, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523-6367.

SUPPLEMENTARY INFORMATION: This amendment to Part 1650 describes the notice which a participant or beneficiary who is being denied benefits will receive, as well as the content of a request to the Board for review of the denial. In addition, the regulations identify the time and place for filing the request for review and the time limit within which the Board's Executive Director will make a decision on the appeal. These regulations are effective retroactive to August 26, 1987, in order to conform with the effective date of Part 1650.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will only affect participants and beneficiaries of the Thrift Savings Plan who have a claim for benefits.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board, as a new agency, has begun making Plan benefits available to participants and beneficiaries and it is necessary to have a claim procedure in place so that they may challenge Board actions on benefits.

List of Subjects in 5 CFR Part 1650

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

For the reasons set forth in the preamble, 5 CFR Part 1650 is amended as follows:

PART 1650—[AMENDED]

1. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5), and 8474(c)(1).

2. A new Subpart J is added to read as follows:

Subpart J—Denial of Benefits

Sec.

Subpart J—Denial of Benefits

§ 1650.50 Notice of denial.

(a) *Time.* If a claim for benefits under this Part is denied in whole or in part by the TSP Service Office, the claimant will be mailed a notice of the denial within 60 days of the receipt of the claim by the TSP Service Office.

(b) *Content.* The notice of denial shall be written in a manner calculated to be understood by the claimant and it shall contain:

(1) The reason or reasons for the denial;

(2) A reference to the law or regulation upon which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect his or her claim and an explanation of why such material or information is necessary; and

(4) Appropriate information concerning the steps to be taken if the participant or beneficiary wishes to submit his or her claim for review.

§ 1650.51 Request for review.

(a) *Content.* A claimant or his or her duly authorized representative may, by written application to the Executive Director, request a review of the denial of a claim. A request for review need not be on any particular form, but shall contain the following information:

(1) If the claimant is a participant, the name, address, social security number, date of birth, and current employing agency or, if separated from Government service, the last employing agency.

(2) If the claimant is not the participant, claimant's name, address, and relationship to the participant as well as any of the information about the participant identified in paragraph (a)(1) which the claimant possesses.

(3) A copy of the letter or other communication from the TSP Service Office, denying the claim in question.

(4) A statement of the claimant's reasons, comments or arguments as to why the claim should not have been denied.

(b) *Time and place for filing.* In order to be considered, a request for review must be received by the Federal Retirement Thrift Investment Board within 60 days following the date of mailing of the written notification denying the claim. Delivery may be by ordinary, registered, certified or overnight mail or by hand. The address is: Federal Retirement Thrift Investment Board, 805 15th Street, NW., Washington, DC. Receipt by an employing agency shall not constitute receipt by the Board.

§ 1650.52 Review decision.

The Executive Director shall notify the employee of the decision on the employee's appeal within 60 days after the Board's receipt of the request for review. This decision shall be written in an understandable manner and shall include the reasons therefor as well as references to applicable statutes and regulations. If the decision denies the claimant's request, in whole or in part, the employee shall have exhausted his or her administrative remedy and shall be eligible to file suit in the appropriate Federal district court pursuant to 5 U.S.C. 8477.

[FR Doc. 88-5587 Filed 3-14-88; 8:45 am]
BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Suspension of the Compensation Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of a rule.

SUMMARY: This final rule suspends, for an indefinite period, a provision of the marketing order for lemons produced in California and Arizona, relating to compensation rates for Lemon Administrative Committee (LAC) members. The LAC is the agency responsible for local administration of the marketing order for lemons grown in California and Arizona. This action will allow the LAC to recommend an increase in the daily compensation which LAC members or alternates acting as members may receive. Presently, such compensation is limited to $25 per day.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-3920.

SUPPLEMENTARY INFORMATION: This suspension order is issued under Marketing Order No. 910 [7 CFR Part 910], as amended, regulating the handling of lemons grown in California and Arizona. The order is in effect pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 85 handlers of lemons subject to regulation under the lemon marketing order, and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of lemons may be classified as small entities.

This action will not have a significant economic impact on small producers or handlers. The compensation rate paid to LAC members is derived from the administrative budget which consists of uniform assessments collected from handlers in order for the LAC to operate and carry out its functions each crop year. The LAC does not anticipate that it would be necessary to increase the current assessment rate to cover the additional expense. The compensation rate paid to LAC members is not a substantial portion of the LAC's budget, therefore, the U.S. Department of Agriculture (Department) does not expect it to become a substantial item in the budget now or in the future. Thus, there is no significant impact anticipated.

Statement of Consideration

The LAC is responsible for locally administering the marketing order for California-Arizona lemons. The LAC consists of 13 members from three grower districts: Eight grower members, four handler members, and one non-industry member. Each member has an alternate member to act as a member when such member is absent. Each grower member also has an additional alternate member. The LAC normally meets once each week to consider supply and demand conditions for lemons.

Section 910.29 of the lemon marketing order currently provides that members of the LAC, and their respective alternates when acting as members, be reimbursed for expenses necessarily incurred by them in the performance of their duties. Section 910.29 states that these members and alternates shall receive compensation at a rate to be determined by the LAC, which shall not exceed $25 for each day, or portion thereof, spent in attending meetings of the LAC. This rate has been in effect since 1971.

The LAC believes that this compensation rate is too low under current economic conditions. Many LAC members and alternates commute long distances and spend time away from their own or their employers' businesses in order to fulfill their obligations as LAC members. Therefore, the LAC has recommended that the provision of the order limiting compensation to $25 be suspended indefinitely in order to allow the LAC to recommend to the Department an increase in the rate. The LAC intends to recommend an increase in compensation consistent with compensation rates paid to members of the Navel and Valencia Orange Administrative Committees. That rate is $50 per day for members or alternates acting as members and $100 per day for the non-industry member or alternate acting as a non-industry member. Any increase in the compensation rate will be subject to approval by the Secretary in the annual LAC budget approval process.

Notice of this action was published in the **Federal Register** [53 FR 255] on January 6, 1988. Written comments were invited from interested persons until February 5, 1988. No comments were received.

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

After consideration of all relevant material presented and other available information, it is found that the suspension of the compensation rate in § 910.29, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, Arizona.

It is therefore ordered, that the following provision in § 910.29 of the California and Arizona lemon order is hereby suspended indefinitely.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

§ 910.29 [Amended]

2. In § 910.29, the phrase "at a rate to be determined by the committee, which rate shall not exceed $25" is suspended indefinitely.

Dated: March 8, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-5660 Filed 3-14-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 1987-88 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1987-88 marketing year. These percentages specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers.

EFFECTIVE DATES: July 1, 1987 through June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 982 [7 CFR Part 982], as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This 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 (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 22 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,400 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the marketing order, is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes the formulas for computing the inshell trade demand, as well as preliminary, interim, and final percentage which establish the amount of inshell filberts/hazelnuts the market can support throughout the season. The preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. On or before November 15, the Board must recommend to the Secretary final percentages which release 100 percent of the inshell trade demand plus 15 percent of the prior three years trade acquisitions. The 15 percent over 100 percent of the inshell trade demand is released to ensure an adequate carryover into the following season. The Board's recommendation and this final rule are based on requirements specified in the order.

This final rule restricts the amount of domestic inshell filberts/hazelnuts that can be marketed in domestic markets. However, the domestic outlets for this commodity are characterized by limited demand and the establishment of free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in § 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages made available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or disposed of in noncompetitive inshell outlets (restricted) during the 1987-88 season. The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation, and is based on preliminary crop estimates. The Board computed and announced preliminary free and restricted percentages of 19 percent and 81 percent, respectively, which released 80 percent of the inshell trade demand. The reason only 80 percent of the inshell trade demand is releasable under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet prior to November 15 to formally review and approve its marketing policy and recommend to the Secretary for approval, the establishment of interim and final free and restricted percentages. The Board uses current crop estimates to calculate the interim and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final percentages release an additional 15 percent of the average trade acquisitions which is used to ensure an adequate carryover into the following season. The final percentages must be effective at least 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

On September 3, 1987, the Board discussed its marketing policy and recommended the use of volume control regulations for the 1987–88 season. The Board computed and announced an estimated inshell trade demand and preliminary percentages which were calculated to release 80 percent of the inshell trade demand to the domestic inshell market.

The Board met on November 12, 1987, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage will not adversely affect the 1987–88 domestic inshell market. Accordingly, no interim free and restricted percentages were recommended. The final marketing percentages are based on the industry's final production estimates and release 4,723 tons to the domestic inshell market.

In addition to complying with the provisions of the marketing order, the Board also considers the Department's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 110 percent of recent year's sales in those outlets before secondary market allocations are approved. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (420 tons) has been included in the calculations used in determining the inshell trade demand. The final percentage, which would make available 100 percent of the inshell trade demand plus 15 percent of the average trade acquisitions, would also make available 125 percent of prior years' sales, thus exceeding the Guideline's requirement.

The marketing percentage are based on the industry's final production estimates and the following supply and demand information for the 1987–88 marketing year:

Inshell supply	Tons	
(1) Total production (USDA official forecast of orchard-run production, 1987 crop)	20,000	
(2) Less substandard, farm use (disappearance)	1,568	
(3) Merchantable production (the Board's adjusted crop estimate)	18,432	
(4) Plus undeclared carryin as of July 1, 1987, subject to regulation	0	
(5) Supply subject to regulation (Item 3 plus Item 4)	18,432	
(6) Average trade acquisition based on three prior years' domestic sales	4,198	
(7) Increase to encourage increased sales (10 percent)	420	
(8) Less declared carryin as of July 1, 1987, not subject to regulation	525	
(9) Inshell Trade Demand	4,093	
(10) 15 percent of the average trade acquisitions based on three years' domestic sales	630	
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,723	
Percentages	**Free**	**Restricted**
(12) Final percentages (Item 11 divided by Item 5)×100	26	74

Notice of this action was published in the **Federal Register** [53 FR 901] on January 14, 1988. Written comments were invited from interested persons until February 16, 1988. No comments were received.

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

After consideration of all relevant material presented and other available information, it is found that the addition of § 982.237, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1987–88 marketing year began July 1, 1987, and the percentages established herein apply to all merchantable filberts handled from the beginning of the crop year; (2) growers and handlers have been conducting their operations in anticipation of the establishment of the full trade demand and final percentages contained in this document; and (3) handlers are aware of this action which was recommended by the Board at an open meeting and need no additional time to comply with the requirements of this final rule.

List of Subjects in 7 CFR Part 982

Marketing agreements and orders, Filberts/hazelnuts, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended by adding § 982.237 to read as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

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

2. Section 982.237 is added to Subpart—Grade and Size Regulation to read as follows:

[*The following section will not be published in the Code of Federal Regulations.*]

§ 982.237 Final free and restricted percentages—1987-88 marketing year.

(a) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1987–88 marketing year shall be 26 and 74 percent, respectively.

Dated: March 10, 1988.

Robert C. Keeney,

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

[FR Doc. 88–5657 Filed 3–14–88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 85-009F]

Standard for Frankfurters and Similar Cooked Sausages

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the standard of identity in the Federal meat inspection regulations for frankfurters and similar cooked sausages (9 CFR 319.180) and cheesefurters and similar products (9 CFR 319.181) to provide for a maximum combination of 40 percent of fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished products. This provides processors more flexibility than they have had under the standards to produce lower fat frankfurters and similar cooked sausages. Previously the standards required that products contain no more than 30 percent fat and no more than 10 percent added water. This rulemaking was initiated in response to a petition submitted by the American Meat Institute.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" under Executive Order 12291. This final rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets because no changes are required; instead, processor flexibility will be increased.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because no changes are required; instead processor flexibility will be increased.

Background

On November 24, 1986, FSIS published in the **Federal Register** (51 FR 42239) a proposal to amend the standard of identity for frankfurters and similar cooked sausage (9 CFR 319.180) and cheesefurters and similar products (9 CFR 319.181) to provide for a maximum combination of 40 percent fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished product. The proposal was developed in response to a petition submitted by the American Meat Institute (AMI) to establish a new standard for a "lite frankfurter" and other similar cooked sausages now provided for in section 319.180 of the Federal meat inspection regulations (9 CFR 319.180). The petitioner requested that the new standard provide for a minimum protein content of 11.5 percent and a maximum fat content of 22.5 percent with no specific restriction on the amount of added water. The petitioner further requested that the name "lite frankfurter" be acceptable without further label statement requirements.

For more than 30 years, the Federal meat inspection regulations (9 CFR 319.180) have required that all cooked sausages contain no more than 10 percent added water. This requirement applies to all types of cooked sausages such as frankfurters, bologna, braunschweiger, cooked salami, and Polish sausage. The standard requested by the petitioner would not limit the amount of added water, although the added water would be indirectly controlled through the establishment of protein and fat levels. The result would be that the amount of added water could be increased above the present 10 percent limit; however, as a result, the amount of fat would be required to be less than then allowed in cooked sausages under the standards. The standards for frankfurters, cheesefurters, and similar cooked sausages permit a maximum fat content of 30 percent. Also, these standards do not specify a minimum protein content. Protein content is indirectly controlled by the limits established for fat and added water.

The Standards and Labeling Division (SLD) of FSIS, which is responsible for approving labeling under the Federal Meat Inspection Act (FMIA) subject to appeal to the Administrator (Sec. 21 U.S.C. 607 (d) and (e); 9 CFR 317.4, 317.5, 335.12), has approved labeling for such "lite" sausages on a case-by-case basis Under SLD's present policy, developed during the course of approval of such labeling, the term "lite" may be used on the labeling of products which have significantly less of a component if the term "lite" is explained on the labeling. In the case of frankfurters and similar products, which have a 30 percent fat limit, a reduction of 17 percent (to 25 percent total fat) was considered significant until March 1986. Therefore, SLD has approved the labeling of a "frankfurter" as "lite" when the fat content did not exceed 25 percent. In March 1986, SLD amended the policy on labeling containing the term "lite". Under the new label approval policy, a significant reduction is a reduction of at least 25 percent. This means that in the case of frankfurters, which have a 30 percent fat limit, a reduction to 22.5 percent fat is needed to use the term "lite". An explanation of the term "lite" continues to be necessary on the label. The explanation may include nutrition labeling or a statement comparing the fat content of the "lite" product to the amount permitted by the standard, found in a market basket survey, or listed in an acceptable recent reference. A "lite" frankfurter, under SLD's policy, would have a protein level of around 12.5 percent because of the added water and fat limitations in the present standard.

A review of nutritional information that accompanied labels approved for frankfurters and similar cooked sausages during the period of July 1983 to April 1984 shows that many processors are providing consumers with products containing 22.5 percent fat or less and a protein content above 12.5 percent (most frequently 14 to 16 percent). A portion of this protein arises from the addition of flavors and binders of animal and/or vegetable origin, the use of which varies among manufacturers. In the last 10 years, SLD has approved, on a case-by-case basis, labels for frankfurters and similar cooked sausages as "lower fat" products. Some of these products have a fat content as low as 20 percent.

The Petition

AMI asserted that the existing regulations and policies cannot generally be applied to lower fat cooked sausages because a significant reduction in fat results in dry and unpalatable products. Further, the petitioner claimed that SLD's policy on the use of the term "lite" on a cooked sausage label is overly restrictive and largely unnecessary. AMI asserted that current nomenclature for product with more than 10 percent added water is unreasonably burdensome labeling and has acted to inhibit the marketing of these sausages. AMI also asserted that the policy requiring an explanation of the term "lite" on labeling is without precedent and is inconsistent with the Food and Drug Administration's (FDA) approach to "reduced calorie" claims. The petitioner argued that there is no need for a mandatory quantitative comparison because the composition and labeling of these products would be tightly controlled by the new standard. In addition, the petitioner mistakenly claimed that SLD policy requires nutrition labeling in conjunction with the term "lite", and suggested that this would be unnecessary if a "lite sausage" standard were to be adopted.

AMI recommended a maximum total fat content of 22.5 percent for a "lite" cooked sausage. This would be a 25 percent reduction from the current standard of no more than 30 percent fat.

The petitioner also asserted that the new standard should at least maintain the same protein levels that consumers have come to associate with traditional cooked sausages. The petitioner claimed that the vast majority of cooked sausages have a minimum of 11 percent protein and therefore recommended a minimum of 11.5 percent protein in the standard for "lite frankfurters" as a reasonable and achievable requirement.

The Center for Science in the Public Interest (CSPI) had also been in direct communication with the Agency concerning the AMI petition. CSPI contended that the proposed AMI standard would not result in a product that would be sufficiently low in fat or calories to be called "lite". CSPI added that it believed that the term "lite" would deceive consumers into purchasing the product because they would falsely believe that the product was low in fat or calories.

CSPI also did not agree that palatable lower fat products cannot be prepared under the present standard, and pointed out the presence in the marketplace of cooked sausages that are lower in fat without exceeding the 10 percent added water limit.

CSPI believed that consumers will assume that products labeled "lite" will not only be lower in fat but also higher in protein. Although CSPI did not object to these products containing more than 10 percent added water, it did believe that this fact should be prominently displayed on the label. CSPI did not see a reason for devising a new standard.

Finally, the Western States Meat Association's Board of Directors submitted a resolution that asked the Department to consider standards that would provide flexibility to its industry to market products that are gaining consumer acceptance but do not degenerate or lower product quality.

FSIS Response

In general, FSIS believes that the request of the petitioner (AMI) is in keeping with FSIS's desire to facilitate the marketing, when possible, of lower fat products. Frankfurters and similar cooked sausages are important components of the American diet, and it is desirable to encourage a variety of such products as long as they are not nutritionally inferior to similar products presently in the marketplace.

The petitioner's claim that a significant reduction in fat results in dry and unpalatable products is not supported. Many processors are providing consumers with products containing 22.5 percent fat or less and a protein content above 12.5 percent.

Notwithstanding this, FSIS believes that it is appropriate to allow cooked sausages with more added water as long as these products are not nutritionally inferior to the presently available cooked sausages. As a result, FSIS proposed to amend the standards for frankfurters, cheesefurters, and similar cooked sausage products (9 CFR 319.180 (a) and (b) and 319.181) to provide for a maximum combination of 40 percent of fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished products. FSIS believes that this would assure that the products are comparable from a protein, vitamin, and mineral standpoint to the products presently in the marketplace, but at the same time allow for greater flexibility in product formulation.

FSIS also views this approach as preferable to the petitioner's approach because setting an appropriate protein content based on currently available information would be quite difficult. The proposed rule, on the other hand, is restricted to water and fat limits already addressed in the regulations and would allow lower fat levels without the need for additional controls associated with setting new protein levels.

FSIS also questions the wisdom of including in a product standard a specific term such as "lite" when so many other terms could legitimately be used and when the term itself can be used in different ways and contexts. To restrict terminology this way did not seem reasonable and would preclude the use of terms that are just as useful and informative. FSIS believes that standardizing varieties of a product simply to permit manufacturers to avoid a labeling explanation would unduly restrict competition and discourage manufacturers from providing to consumers information now available. Also such a position would be inconsistent with FSIS's policies that assure labeling is not false or misleading and encourage manufacturers to provide additional information. Further, if the term were added to the regulations, this could preempt its use in other contexts. Therefore, FSIS did not propose to include the term "lite" in the regulations.

FSIS also notes that the FDA requires that labels with the term "lite" include full nutrition labeling. USDA does not require nutrition labeling. However, a company can compare the macronutrient content, i.e., the calorie, protein, carbohydrate, and fat content, of a "lite" cooked sausage product to the standard using the recognized format. A comparison of the percentage of the U.S. Recommended Daily Allowance for vitamins, minerals, and protein may also be included. FSIS also notes that many companies preparing food products under the jurisdiction of FDA also provide useful explanatory information such as "One-third less calories than other similar products."

Therefore, FSIS did not propose to adopt a "lite sausage" standard *per se*. FSIS continues to believe that an explanation of the term is necessary to prevent labeling from misleading consumers. It is important that the consumer understand the meaning of the term "lite", and such a term should be explained whenever it is used because of its inherent vagueness. As discussed, the explanation may take the form of a suitable quantitative comparative statement of fat content.

During the rulemaking process, FSIS considered the option of eliminating the standard of identity for frankfurters. As indicated in the notice of proposed rulemaking, no standard setting maximum fat or added water content is currently in place for analogous cooked sausages prepared with poultry product ingredients, e.g., chicken frankfurters. FSIS solicited public comment on whether there is a market failure that creates a need for the frankfurter standard and on the benefits and costs to industry and consumers associated with eliminating the standard.

In addition to eliminating the standard, FSIS considered the use of appropriate labeling. CSPI had stated that without appropriate labeling, consumers will be deceived into thinking that the new frankfurters are not only lower in fat but higher in protein. FSIS solicited comments on CSPI's contention and on whether without a standard there would be a market failure creating the need for labeling. One labeling alternative that FSIS identified as potentially appropriate is labeling each package of frankfurters with the relative percentage of fat, added water, and/or protein. This approach might be easiest for processors because their products are formulated by percentage. However, FSIS did not endorse any specific labeling alternative and actively solicited public comment on the advantages and disadvantages of percentage labeling as well as suggestions on what other types of labeling would be preferable. In evaluating labeling alternatives, commenters were asked to discuss the specific information problems consumers face, the costs and burdens on processors, the technical feasibility of such labeling, and the public's ability to use the labeling effectively.

Comments on the Proposed Rule

The comment period on the proposal was scheduled to close on January 23, 1987. However, in response to several requests, FSIS extended the comment period an additional 60 days (52 FR 2416) until March 24, 1987, and later an additional 90 days (52 FR 9303) until June 22, 1987.

FSIS received 115 comments in response to the proposal—75 from consumers, 12 from trade associations, 15 from industry, and 13 from educational or governmental organizations. Of the comments received, 52 opposed the proposal to allow the replacement of fat with water, 53 supported the proposal, and 10 did not voice an opinion.

Most consumer comments apparently were prompted by brief newspaper article descriptions that did not fully explain the FSIS proposal. Of the 75 comments from consumers, many expressed general opposition to the proposal because they did not want to pay high prices for additional water. While the idea of reduced fat products was supported, the concomitant increased addition of water was often viewed as undesirabel. However, some consumers believe that water is a much better alternative than fat.

Very few consumers offered any alternative approaches to reduced fat products except for the increase in lean content which can be accomplished under the current regulation. However, several commenters maintained that the price of "lite" sausage products would definitely be higher if industry were required to increase the lean content of the product. These commenters believe that consumers should have the choice of purchasing lower fat products that are not substantially more expensive than current sausage products.

The majority of the comments from industry encouraged the immediate implementation of the FSIS proposal since it would provide a minimum of change and increased flexibility. Many believe that the change will stimulate innovation and bring red meat products more in line with similar poultry products. Two commenters agreed with the original AMI request for development of a new "lite" standard that would not require an explanation of "lite" to be included on labeling. However, many commenters were opposed to the use of the term "lite" being dictated. These commenters also pointed out that due to the diverse meanings of the term "lite", it would be misleading not to include an appropriate definition on labeling. After further evaluation, AMI also supports the continued handling of terms such as "lite" within FSIS's current guidelines. FSIS will continue to require an explanation of the term "lite" according to previously established guidelines since there are numerous meanings associated with this term.

The remainder of the comments came from trade associations, consumer groups, universities, and governmental sources. Many supported the proposal to permit the exchange of water for fat, provided the percentage of fat does not exceed 30 and the percentage of fat and added water does not exceed 40. However, much of the support was conditional based upon FSIS's implementing or changing other requirements related to the Federal meat and poultry products inspection regulations.

Of those responding to the FSIS request for views on eliminating the frankfurter standard, only two commenters were in favor of such action. Their reasons were to allow for the addition of wholesome fish protein products as optional ingredients in franks and to allow red meat franks to better compete with poultry franks. Other commenters were vehemently opposed to the elimination of the standard. They believe that standards stabilize the quality of products offered to consumers. Also, as one commenter stated, traditionally, consumers have expressed concern about the ingredient composition of this category of products. Removal of the standard would justifiably heighten their concern. Others also believe that if Part 319 standards were dropped, informal standards would evolve as FSIS personnel attempt to maintain consistency within product categories.

Several commenters responded to FSIS's request for other potentially appropriate labeling approaches, including percentage labeling. Suggested alternative approaches included controls for total protein and fat and minimum meat protein levels similar to the PFF regulations for cured pork products. Only a few commenters suggested alternative approaches and there was no clear consensus on any one approach. However, the majority of those responding to this request for views supported the continuation of a standard and opposed labeling approaches such as percentage labeling as an alternative. While several supported percentage labeling in theory, stating that anything to improve the accuracy of information is desirable, most were opposed due to the cost burden anticipated and were skeptical of consumer interpretation of this type of information. AMI stated that issues involving percentage ingredient labeling must be comprehensively addressed and debated on their own merits rather than being arbitrarily applied to one category of product in such a piecemeal fashion. Another commenter believes that percentage labeling is acceptable for supplementation but a standard is required to insure the integrity of cooked sausage products.

Several issues were raised by those in support of the proposal as well as those in opposition. The following is a summary of the issues and FSIS's response to each.

1. Full Nutrition Labeling

Comment: Consumer groups in particular are concerned that without a requirement for full nutrition labeling, there will be no incentive for companies to continue producing "lite" products by increasing the lean portion if they can increase the water. Also, they believe consumers cannot judge the nutritive value of "high water" franks compared to the currently produced "lite" franks. Finally, nutrition information can alert consumers to the fact that these "lite" products may still be fairly high in fat and sodium.

Response: FSIS continues to encourage the use of full nutrition labeling. For any products labeled as "lite", SLD of FSIS requires an explanation of the term. The explanation must provide to the purchaser quantitative information about the amount of calories, fat, sodium, and/or other components in the product and include a quantitative comparison to the amounts permitted by an applicable standard, the amounts found in a market-basket survey, or the amounts in a similar product or class of products as found in recent applicable reference sources. FSIS believes that this requirement provides sufficient information for consumers to make informed choices.

2. Requirements for Other Sausages

Comment: Several commenters stated that the new requirement may be unfair in comparison to other sausage-type products such as salami that will continue to have to comply with the 10 percent maximum on added moisture.

Response: The petition from AMI related specifically to frankfurters and similar cooked sausages which have both fat and water restrictions. FSIS recognizes that other cooked sausage products could also be formulated with more water. However, other cooked sausage standards do not include an analogous fat content limit. In this rulemaking, FSIS has focused its attention on cooked sausages of those types which have both fat and water limitations. Petitions to change the regulations for other sausage-type products would be evaluated by FSIS on their own merits.

3. Non-meat Proteins

Comment: A number of commenters stated that the proposal failed to address the issue of non-meat proteins. Use of certain non-meat proteins can increase the amount of added water since their protein content is not deducted from the total protein prior to calculations for added water. However, other commenters saw no need to address non-meat proteins in this rulemaking since the concern is not limited to one category of products.

Response: FSIS recognizes the importance of non-meat proteins as functional ingredients. However, as several commenters pointed out, the focus of this proposal was to permit the replacement of fat with added water. Also, concerns about non-meat proteins are not limited to a single category of products and should be more comprehensively addressed. FSIS has concluded that it is not appropriate to delay implementation of this rule to address the use of non-meat proteins. FSIS is addressing the non-meat protein issue for all cooked sausage products subject to added moisture controls in a rulemaking proceeding initiated on August 18, 1987 (52 FR 30925).

4. Product Name Qualifiers

Comment: Several commenters objected to the requirement that if binders and extenders such as vegetable protein products are used, the name of each must prominently appear on the label contiguous to the product name, but there is no such requirement when ingredients such as poultry products and Mechanically Separated (Species) are used. One of these commenters also believed that FSIS should eliminate the current use limitations on vegetable protein products and credit in the calculations for added moisture the protein from ingredients such as soy protein isolate, which the commenter considered to be equivalent to meat from a protein quality standpoint.

Response: FSIS recognizes the apparent inconsistency of restrictions imposed on the use of vegetable protein products due to labeling requirements and product standards. However, these issues are not limited to a single category of product. Allowing credit for vegetable proteins, believed by some commenters to be equivalent in quality to meat protein, would allow for the replacement of livestock and poultry product ingredients with other sources of protein, such as hydrated vegetable protein products. Such a change would have broad policy implications, well beyond the scope of this rulemaking. For these reasons, FSIS believes it to be inappropriate to incorporate or consider these changes in this final rule. However, due to the merit of these comments, FSIS intends to pursue a rulemaking proceeding regarding the current use limitations on vegetable protein products and the requirements for product name qualifiers when these products are used.

Final Rule

For reasons set out in the preamble, Title 9, Part 319 of the Code of Federal Regulations is amended as set forth below.

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

§ 319.180 [Amended]

2. In § 319.180, paragraphs (a) and (b) are amended by removing that portion of the fourth sentence in paragraph (a) and that portion of the fifth sentence in paragraph (b) reading: "but the sausage shall contain no more than 10 percent of added water" and substituting therefor the following: "but the sausage shall contain no more than 40 percent of a combination of fat and added water".

§ 319.181 [Amended]

3. Section 319.181 is amended by removing that portion of the last sentence reading: "These products shall contain no more than 10 percent of added water and/or ice, 30 percent fat" and substituting therefor the following: "These products shall contain no more than 40 percent of a combination of fat and added water, and no more than 30 percent fat".

Done at Washington, DC, on March 10, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-5656 Filed 3-14-88; 8:45 am]

BILLING CODE 3410-DM-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 145

Registration Requirements for Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors, Leverage Transaction Merchants and their Associated Persons; Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted amendments to its rules governing the registration under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* ("Act"), of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and the associated persons of such registrants by the National Futures Association ("NFA") and the registration of leverage transaction merchants and their associated persons by the Commission. This action is being taken in order to authorize the implementation of certain registration rules which have been submitted by NFA for Commission approval and thereby eliminate any inconsistency between the Commission's rules and those of NFA. The amendments specifically are intended to streamline the registration process by narrowing the circumstances requiring a new registration, eliminating

the annual renewal of registrations, eliminating the use of certain forms, authorizing NFA to process withdrawals from registration, and implementing a temporary licensing procedure for persons changing sponsors within a 60 day period.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Rosenfeld, attorney, Division of Trading and Markets, Commodity Futures Trade Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated July 2, 1987, NFA submitted for approval, pursuant to section 17(j) of the Act, proposed Registration Rules of NFA [1] which are intended to streamline the registration process and to identify in one set of rules all requirements necessary to become registered under the Act, proficiency requirements necessary to become registered with NFA as an Associate, as well as NFA registration procedures, NFA has adopted a new compilation of all Commission and NFA rules governing the registration process. Those rules essentially restate existing Commission registration requirements (as well as NFA proficiency requirements). However, those rules also introduce numerous substantive procedures which are intended by NFA to facilitate the registration process under the Act but which currently are not provided for by the Commission's registration rules.

In order to facilitate the early implementation of the NFA Rules, the Commission had proposed certain amendments to Part 3 of its regulations governing registration which were intended to eliminate any such inconsistency between the Commission's rules and those new registration procedures as reflected in the NFA Rules. *See* 52 FR 45350 (November 27, 1987). For consistency, amendments also were proposed for Commission rules governing leverage transaction merchants and their associated persons, whose registrations will continue to be processed by the Commission and not by NFA.

II. Explanation of Commission Rule Amendments

Given the extensive review and comment as to the underlying NFA rules by NFA membership,[2] the Commission's proposal did not receive adverse comment.[3] Accordingly, except as otherwise noted in this release, the Commission is adopting the amendments to Part 3 of its regulations is the form in which those amendments were published, and for the reasons previously set forth, in 52 FR 45350 (November 27, 1987).

A. Rule § 3.32

As proposed, the Commission is amending § 3.32 by deleting the reference in § 3.32(a) to changes in the form of organization of a registrant as a change requiring a new registration. The Commission also proposed to incorporate the definitions of changes in control currently described in § 3.32(d) (1)–(5) into a uniform format under § 3.32(a). 52 FR 45352. The changes in control which currently are set forth in § 3.32(d) (1)–(5) expressly were intended to specify the circumstances which the Commission would deem to constitute a change in the control of a corporation. 49 FR 8208, 8216 (March 5, 1984). Although the proposed format of § 3.32 was not intended to change existing substantive requirements, the omission of a specific reference to corporate registrants in proposed § 3.32(a) (1)–(5) could raise uncertainty as to the intent of that rule. In order to eliminate any possibility of ambiguity, the Commission is amending proposed § 3.32(a) (1)–(5) to make clear that those subsections specify changes in the control of corporate registrants.[4]

Thus, other than deleting a change in the form of organization as a basis for requiring a new registration, the Commission intends that the change in format of new § 3.32 not impose any new substantive registration requirement.

B. Rule § 3.40(d)

New § 3.40 provides that the failure of an applicant or the applicant's sponsor to respond timely (*i.e.,* in accordance with such request) to a written request for clarification of application information or resubmission of fingerprints will be deemed to constitute a withdrawal of the application and result in the immediate termination of the applicant's temporary license.

In its proposal, the Commission noted that the failure of a sponsor to respond to NFA could result in the termination of an applicant's temporary license and suggested that the applicant should be notified by NFA of any untimely response by a sponsor. *See* 52 FR 45350, 45354 n.16 (November 27, 1987). In a letter to the Commission dated December 29, 1987, NFA assured the Commission that NFA will give an applicant timely notice of a sponsor's failure to respond to requests for information.

C. Order Granting NFA Withdrawal Authority

As explained in the Commission's proposal,[5] amendments to § 3.33 would authorize procedures for NFA to follow in processing and granting withdrawals for certain registrants for whom the Commission previously has authorized NFA to grant registration (*i.e.,* futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors).[6] The Commission would continue to process withdrawals for leverage transaction merchants.[7] The Commission believes

[1] On August 1, 1983, the Commission delegated to NFA and NFA assumed responsibilities for processing and granting applications for initial and renewal registrations of introducing brokers and their associated persons. 48 FR 35158 (August 3, 1983). Subsequently, on December 3, 1984 NFA was delegated such responsibilities by the Commission with respect to the registration of FCMs, CPOs, CTAs, and APs of such registrants. 49 FR 39593 (October 9, 1984); 49 FR 45418 (November 16, 1984). On August 22, 1985, the Commission authorized NFA to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any person applying for registration or registered as an FCM, IB, CPO, CTA or AP of such registrant who is or may be subject to a statutory disqualification under sections 8a(2)–8a(4) of the Act. 50 FR 34885 (August 28, 1985); 50 FR 39080 (September 27, 1985). On September 23, 1986, the Commission authorized NFA to process and grant applications for registration with the Commission as floor brokers. 51 FR 34490 (September 29, 1986).

[2] The Executive Committee of NFA reviewed a first draft of the Registration Rules (the "Rules") at its meeting on January 15, 1987. This draft was developed by NFA staff with the participation of the Commission's Division of Trading and Markets (the "Division"). NFA staff worked closely with the Division throughout the rule development process. After suggesting certain minor revisions to the Rules, the Executive Committee authorized staff to release the Rules for comment. NFA staff sent a Notice to NFA Members (the "Notice") during the week of February 2, 1987, which explained and sought comment on the substantive changes that the Rules made to the Commission's Part 3 regulations.

In response to the Notice, NFA received comments from eight Members and from a law firm representing the National Association of Futures Trading Advisors. NFA also received comments from its Advisory Committees, all exchanges, and the Association of Registration Managers. All of the comments strongly supported the changes proposed by the Rules. However, certain suggestions were made and were incorporated into the Rules adopted by NFA's Board of Directors.

[3] Comment letters stating general support for the proposed amendments were received from the National Futures Association and an attorney.

[4] Because the amendment of § 3.32(a) (1)–(5) is, as explained above, merely intended to preserve existing Commission requirements in § 3.32, the Commission finds that notice and public comment is unnecessary pursuant to 5 U.S.C. 553(c) of the Code of Administration Procedure.

[5] 52 FR 45350 (November 27, 1987).

[6] *See* 52 FR 45350, n.2 (November 27, 1987).

[7] The duration of registration of associated persons is coextensive with the duration of their association with a registrant. *See* 17 CFR 3.12(b).

Continued

that granting NFA withdrawal authority is consistent with the general assumption by NFA of registration processing [8] and the the procedures of § 3.33 permit the Commission to retain a necessary degree of control over the withdrawal process.

Accordingly, pursuant to the authority of section 8a(10) of the Act, 7 U.S.C. 12(a), the Commission hereby authorizes NFA to process and grant withdrawals for futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors under the procedures set forth in Commission rule 3.33, 17 CFR 3.33 (1987), as amended and subject to all conditions and undertakings (as appropriate) set forth in the Commission's prior order authorizing the performance of registration funcitions by NFA.[9]

D. Publication of Form 7–W

As noted above, NFA is authorized to process and grant withdrawals from registration for certain registrants and to require such registrants to petition for withdrawal of Form 7–W. Form 7–W is a standardized form which incorporates the filing requirements currently contained in rule 3.33. Thus, the new form will not impose any new substantive requirements, and its adoption simply implements previously adopted rule 3.33 requirements. The Commission is publishing as an appendix to this release a copy of Form 7–W.[10]

III. Technical Amendments

A. Section 145.6

The Commission is amending § 145.6(b) (1) and (2), which specify the parts of Commission registration forms that are available for public inspection and the locations where such forms may be inspected by adding appropriate references to Form 7–W (withdrawal for registration).[12]

B. Elimination of Form 8–S

As explained in the Commission's proposal, Form 8–R previously had been revised to incorporate the information and certifications called for in Form 8–S which is used to effect the special registration procedures of Commission rules 3.12(d) and 3.16(d).[11] As a result, there currently are two forms (8–R and 8–S) which can be used to file under the special registration procedures. NFA has stated, and the Commission concurs, that in light of the prior revisions to Form 8–R, the continued use of Form 8–S essentially constitutes a paperwork "artifact" that no longer is necessary.

Accordingly, the Commission hereby gives notice that Form 8–S is withdrawn and no longer will be used to effect the special registration procedures of Commission rules 3.12(d) and 3.16(d).

C. Removal of § 3.12a–(T)

In an unrelated matter, the Commission is deleting § 3.12a–(T). "Transfer of associated persons; temporary exemption" from its regulations, because that special provision by its terms is no longer effective.

IV. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously had determined that FCMs and registered CPOs should not be considered small entities for purposes of the RFA.[13] With respect to CTAs, floor brokers, introducing brokers and leverage transaction merchants, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some should be considered to be small entities, and if so, that it would analyze the economic impact on them of any rule.[14] Because the rules would amend registration rules that currently are applicable to the above-mentioned registrants, would not result in any additional burdens and would streamline and, in some instances, eliminate the need for filings, the Commission believes that the final rules would not have a significant economic impact on the above-noted entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman of the Commission certifies that the rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this proposal and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection associated with these rules on December 22, 1987 and assigned OMB control number 3038–0023 to the rules. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 3

Associated person, Commodity pool operator, Commodity trading advisor, Futures commission merchant, Introducing broker, Leverage transaction merchant, National Futures Association, Registration requirements, Temporary licensing, Withdrawals from registration.

17 CFR Part 145

Freedom of Information Act, Registration records.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 thereof, (7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23, hereby amends Subparts A and B of Part 3 of chapter I of Title 17 of the Code of Federal Regulations as specified below.

PART 3—REGISTRATION

1. The authority citation for subpart A continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a, unless otherwise noted.

3.16(b) and 3.18(b) (1987). Similarly, the duration of registration of floor brokers is coextensive with the floor broker having valid trading privileges. *See* 17 CFR 3.11(b) (1987). Thus, the termination of registration essentially is self-executing for associated persons and floor brokers simply by ceasing their association with their registrant sponsors and the termination of trading privileges, respectively.

[8] *See* 49 FR 39593 (October 9, 1984). The Commission expressly noted that it was not authorizing NFA to process and grant withdrawal petitions.

[9] Order dated October 9, 1984, 49 FR 39593, 39594–39597 (October 9, 1984).

[10] Because Form 7–W merely incorporates the substantive provisions of rule 3.33, which have been published for notice and comment, the Commission finds that notice and public comment with respect to the form itself is unnecessary pursuant to 5 U.S.C. 553(c) of the Code of Administrative Procedure.

[11] 52 FR 45350, 45352 (November 27, 1987) *citing* 50 FR 28907, 28908 (July 17, 1985).

[12] Because the inclusion of references to Form 7–W in § 145.6 is merely technical in nature, the Commission finds that notice and public comment is unnecessary pursuant to 5 U.S.C. 553(c) of the Code of Administrative Procedure.

[13] 47 FR 18618–18620 (April 30, 1982).

[14] 47 FR 18618, 18620 (April 30, 1982) (CTAs and floor brokers); 48 FR 35248, 35276 (August 3, 1983) (introducing brokers). *See* 49 FR 5498, 5520 (February 13, 1984) (leverage transaction merchants).

Subpart A—Registration

2. Section 3.2 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d) and by revising paragraphs (a) and (d), as redesignated, to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification of registration.

(a) Except as otherwise provided in any rule, regulation or order of the Commission, the registration functions of the Commission set forth in Subpart A, Subpart B and Subpart C of this part shall be performed by the National Futures Association, in accordance with such rules, consistent with the provisions of the Act and this part, applicable to registrations granted under the Act that the National Futures Association may adopt and are approved by the Commission pursuant to section 17(j) of the Act.

* * * * *

(d) Any registration form, any schedule or supplement thereto, any fingerprint card or other document required by this part or any rule of the National Futures Assocation to be filed with the National Futures Association shall be deemed for all purposes to have been filed with, and to be the official record of, the Commission.

3. Section 3.10 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants.

* * * * *

(b) *Duration of registration.* A person registered as a futures commission merchant in accordance with paragraph (a) of this section will continue to be so registered until such registration is suspended, revoked, terminated or withdrawn.

* * * * *

(d) *Annual filing.* Any person registered as a futures commission merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

4. Section 3.12 is amended by revising paragraphs (c)(1)(ii), (d) heading, (d)(1) introductory text, (d)(1)(iii), (d)(2) and (d)(3) and by adding new paragraphs (d)(1)(vi), (d)(4) and (d)(5) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(1) * * *

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding three years.

* * * * *

(d) *Special temporary licensing and registration procedures for certain persons*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(iii) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (d);

* * * * *

(vi) That the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(2) *Registration still in effect.* Except as provided for in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity is still in effect and who becomes associated with a sponsoring futures commission merchant or introducing broker will be registered as an associated person of such sponsor upon mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, containing the written certifications required by paragraph (d)(1) of this section.

(3) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)–(iv) and (d)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(4) An applicant will not be registered or granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such Form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(5) A temporary license received in accordance with paragraph (d)(1) of this section will terminate five days after service upon the applicant of a notice by the National Futures Association that such person may be found subject to a statutory disqualification from registration.

* * * * *

§ 3.12a–(T) [Removed]

5. Section 3.12a–(T) "Transfer" of associated persons; temporary exemption, is removed in its entirety.

6. Section 3.13 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.13 Registration of commodity trading advisors.

* * * * *

(b) *Duration of registration.* A person registered as a commodity trading advisor will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual Filing.* Any person registered as a commodity trading advisor in accordance with paragraph (a) of this section must file with the National Futures Association of Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

7. Section 3.14 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.14 Registration of commodity pool operations.

* * * * *

(b) *Duration of registration.* A person registered as a commodity pool operator will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual filing.* Any person registered as a commodity pool operator in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7-R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association to protect the commodity futures markets, members of the National Futures Association or the public, the National Futures Association may grant the request for withdrawal from registration.

8. Section 3.15 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.15 Registration of introducing brokers.

* * * * *

(b) *Duration of registration.* A person registered as an introducing broker will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual filing.* Any person registered as an introducing broker in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7-R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

9. Section 3.16 is amended by revising paragraphs (c)(1)(ii), (d) heading, (d)(1) introductory text, (d)(1)(iii), (d)(2), (d)(3), and by adding new paragraphs (d)(1)(vi) and (d)(4) to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

* * * * *

(c) * * *

(1) * * *

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8-R which relate to the applicant's education and employment history during the preceding three years.

* * * * *

(d) *Special temporary licensing procedure for certain persons*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(3) and (e) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8-R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(iii) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (d);

* * * * *

(vi) That the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than 30 days previously in an amendment to such application.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certification permitted by paragraphs (d)(1)(ii)-(iv) and (d)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(3) An applicant will not be granted a temporary license upon mailing of a properly completed Form 8-R pursuant to paragraph (d) of this section unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(4) A temporary license received in accordance with paragraph (d) of this section will terminate five days after service upon the applicant of a notice by the National Futures Association that such person may be found subject to a statutory disqualification from registration.

* * * * *

10. Section 3.17 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.17 Registration of leverage transaction merchants.

* * * * *

(b) *Duration of registration.* A person registered as a leverage transaction merchant will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual filing.* Any person registered as a leverage transaction merchant in accordance with paragraph (a) of this section must file with the Commission a Form 7-R, completed in accordance with the instructions thereto, annually on a date specified by the Commission. The failure to file the Form 7-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission, the Commission may grant the request for withdrawal from registration.

11. Section 3.18 is amended by revising paragraphs (c)(1)(ii), (d) heading, (d)(1) introductory text, (d)(1)(iii), (d)(2) and (d)(3), and by adding new paragraphs (d)(1)(vi), (d)(4) and (d)(5) to read as follows:

§ 3.18 Registration of associated persons of leverage transaction merchants.

* * * * *

(c) * * *

(1) * * *

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8-R which relate to the applicant's education and employment history during the preceding three years.

* * * * *

(d) *Special temporary licensing and registration procedures for certain persons*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(4) and (e) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the Commission of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(iii) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (d);

* * * * *

(vi) That the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)–(iv) and (d)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(3) *Registration still in effect.* Except as provided for in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity is still in effect and becomes associated with a sponsoring leverage transaction merchant will be registered as an associated person of such sponsor upon mailing by that sponsor to the Commission of a Form 8–R, completed in accordance with the instructions thereto, containing the written certification required by paragraph (d)(1) of this section.

(4) An applicant will not be registered or granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(5) A temporary license granted in accordance with paragraph (d) of this section will terminate five days after service upon the applicant of a notice by the Commission that such person may be found subject to a statutory disqualification from registration.

* * * * *

12. Section 3.22 is amended by revising paragraphs (a) and (b) to read as follows:

§ 3.22 Supplemental filings.

* * * * *

(a) That information has come to the attention of the staff of the Commission or of the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice, or that the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and

(b) That the person, or any individual who, based upon his or her relationship with that person is required to file a Form 8–R in accordance with the requirements of this Part, as applicable, must, within such period of time as the Commission or the National Futures Association may specify, complete and file with the Commission or the National Futures Association a current Form 7–R, or if appropriate, a Form 8–R, in accordance with the instructions thereto. A Form 8–R must be accompanied by that individual's fingerprints on a fingerprint card provided by the Commission or the National Futures Association for that purpose.

* * * * *

13. Section 3.31 is amended by revising paragraphs (a) and (c)(1) introductory text to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Schedules A, B or C of Form 7–R which no longer renders accurate and current the information contained therein. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto: *Provided,* if a registrant files a Form 3–R to report a change in the form of the organization of the registrant, such Form must be accompanied by a document signed in a manner sufficient to be binding under local law by a person authorized to act on behalf of the registrant, in which the registrant certifies that it will be liable for all obligations of the pre-existing organization under the Act, as it may be amended from time to time, and the rules, regulations or orders which have been or may be promulgated thereunder.

* * * * *

(c)(1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, within twenty days after the occurrence of either of the following, file a notice thereof with the National Futures Association or, in the case of a leverage transaction merchant, with the Commission, indicating:

* * * * *

14. Section 3.32 is amended by revising paragraphs (a), (d), (e)(1), (g), and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a) Except as otherwise provided in this section, if the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, registration is deemed to terminate and a new registration is required whenever a person not listed on the registrant's initial registration application (or amendment of such application prior to the granting of registration):

(1) Acquires the right to vote or becomes the beneficial owner of 10 percent or more of the corporate registrant's voting securities;

(2) Becomes entitled to receive ten percent or more of the corporate registrant's net profits;

(3) Contributes 10 percent or more of the corporate registrant's capital;

(4) Becomes a director of the corporate registrant;

(5) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;

(6) Acquires ownership of the registrant's business in the case of a sole proprietorship; or

(7) Becomes a general partner of the registrant in the case of a partnership.

* * * * *

(d) In the event of a change requiring the filing of an application for registration pursuant to paragraph (a) of this section, if each person not listed as a principal on the registrant's initial application or any amendment thereto currently is registered in any capacity or is a principal of a current Commission registrant with respect to whom the registrant has made all necessary filings under this part, such registration shall not terminate until the earliest of:

(1) 90 days from the date that such change occurred; or

(2) Notification by the National Futures Association or the Commission of the granting of the new registration; or

(3) Five days after service upon the registrant of a notice by the National Futures Association or the Commission that the registrant may be found subject to a statutory disqualification from registration.

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraphs (a)(4) or (a)(5) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association or, in the case of a leverge transaction merchant, to the Commission, prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association or, in the case of a leverage transaction merchant, from the Commission), and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who will become a principal of the registrant. The Form 8–R for each such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association, or by the Commission if the registrant is a leverage transaction merchant: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who currently is registered with the Commission as an associated person or floor broker, or is a principal of a Commission registrant for whom the filings required by this part have been made.

* * * * *

(g) Notwithstanding the provisions of §§ 3.12(a), 3.16(a) and 3.18(a), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements set forth in §§ 3.10(a), 3.13(a), 3.14(a), 3.15(a), or 3.17(a) of this chapter, the applicant or registrant must file a Form 8–R with the National Futures Association, or the Commission if the applicant or registrant is a leverage transaction merchant. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association, or by the Commission if the applicant or registrant is a leverage transaction merchant. This filing need not be made for any such principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association: *Provided,* That within twenty days the applicant or registrant must notify the National Futures Association, or the Commission if the applicant or registrant is a leverage transaction merchant, of the name of such added principal on Form 3–R.

* * * * *

15. Section 3.33 is amended by revising paragraphs (a)(3), (b) introductory text, (e), and (f) to read as follows:

§ 3.33 Withdrawal from registration.

(a) * * *

(3) The registrant is excluded from the persons or any class of persons required to be registered in such capacity: *Provided,* That the National Futures Association or the Commission, as appropriate, may consider separately each capacity for which withdrawal is requested in acting upon such a request.

(b) A request for withdrawal from registration under this section must be made on a Form 7–W completed and filed with the National Futures Association or with the Commission in the case of a leverage transaction merchant, in accordance with the instructions thereto. The request for withdrawal must be made by the sole proprietor if the registrant is a sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation, and must specify:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor or commodity pool operator must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the registrant, and by the National Futures Association within three business days of the receipt of such withdrawal request, to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street, NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d), 3.13(c), 3.14(c) or 3.15(c) of this chapter to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination. A request for withdrawal from registration as a leverage transaction merchant must be sent only to the Commission at the above address.

(f) Except as otherwise provided §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) and 3.17(c) of this chapter, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association (or, in the case of a leverage transaction merchant, by the Commission), or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) or the Commission of the granting of such request, unless prior to the effective date:

(1) The Commission or the National Futures Association has instituted a proceeding to suspend or revoke such registration;

(2) The Commission or the National Futures Association imposes, or gives notice by mail which notice shall be complete upon mailing, that it intends to impose terms or conditions upon such withdrawal from registration;

(3) The Commission or the National Futures Association notifies the registrant by mail, which notice shall be complete upon mailing, or the registrant otherwise is notified that it is the subject of an investigation to determine, among

other things, whether such registrant has violated, is violating, or is about to violate the Act, rules, regulations or orders adopted thereunder;

(4) The Commission or the National Futures Association requests from the registrant further information pertaining to its request for withdrawal from registration; or

(5) The Commission or National Futures Association determines that it would be contrary to the requirements of the Act, or of any rule, regulation or order thereunder, or to the public interest to permit such withdrawal from registration.

* * * * *

Subpart B—Temporary Licenses

16. The authority citation for Subpart B continues to read as follows:

Authority: Secs. 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act (7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23); 5 U.S.C. 552 and 552b.

17. Section 3.40 is amended by adding paragraph (d) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

* * * * *

(d) The failure of an applicant or the applicant's sponsor to respond to a written request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or for the resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

18. Section 3.42 is amended by revising paragraph (a)(2) and by adding paragraph (a)(3) to read as follows:

§ 3.42 Termination of temporary licenses of applicants for associated person registration.

(a) * * *

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in § 3.40(c); or

Immediately upon the withdrawal of the registration application pursuant to § 3.40(d).

* * * * *

19. Section 3.44 is amended by revising paragraphs (a)(4) (i) and (c) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(4) * * *

(i) The futures commission merchant has verified the information on the Forms 8–R filed pursuant to paragraph (a)(3) of this section which relate to education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding three years; and

* * * * *

(c) An applicant that fails to respond in accordance with a written request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card will be deemed to have withdrawn its registration application and the temporary license issued to such applicant and any associated person thereof shall terminate immediately.

20. Section 3.46 is amended by revising paragraph (a)(3) to read as follows:

§ 3.46 Termination of temporary licenses of applicants for guaranteed introducing broker registration.

(a) * * *

(3) Upon the failure of an applicant to respond to a written request by the Commission or the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) of this subpart in accordance with such request.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

21. The authority citation for Part 145 continues to read:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, and Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (7 U.S.C. 4a(j)), unless otherwise noted.

22. Section 145.6 is amended by revising the first sentences of paragraphs (b)(1) and (b)(2) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

* * * * *

(b)(1) The publicly available portions of Form 7–R (application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant), Form 8–R (application for registration as an associated person and floor broker and biographical supplement to application on Form 7–R), Form 8–S (certificate of special registration), Form 8–T (notice of termination) and Form 7–W (withdrawal from firm registration) will be available for public inspection and copying. * * *

(2) The fingerprint card and any supplementary attachments filed in response to items 6–9 and 14–21 on Form 8–R, to item 3 on Form 8–S, to items 3–5 and 9–11 on Form 8–T, to items 9–10 on Form 7–R or to item 7 on Form 7–W generally will not be available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. * * *

Issued in Washington, DC on March 8, 1988 by the Commission.

Jean A. Webb,

Secretary of the Commission.

Note.—The following form will not appear in the Code of Federal Regulations.

BILLING CODE 6351-01-M

OMB No. 3038-0023

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION FORM 7-W

Request for withdrawal from registration as a Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Leverage Transaction Merchant or NFA Membership.

WITHDRAWAL FROM FIRM REGISTRATION AND/OR NFA MEMBERSHIP

1 Registrant for which withdrawal is being requested.

NAME ______

ADDRESS (STREET) ______

CITY ______ STATE ______ ZIP CODE ______

NFA ID# ______ CFTC ID# ______

2a Request for withdrawal as: (Check all categories for which withdrawal is requested. If withdrawal is for more than one category, and the reason for withdrawal is not the same for each category, provide the reason for withdrawal for each category on a supplemental sheet).

- ☐ Futures Commission Merchant
- ☐ Introducing Broker
- ☐ Commodity Trading Advisor
- ☐ Commodity Pool Operator
- ☐ Leverage Transaction Merchant
- ☐ NFA Membership

2b List clearing firm(s):

______

2c If a guaranteed IB, list FCM Guarantor:

______

3 Name and relationship to registrant of person authorized to make the withdrawal request: (In the case of a corporation, attach a certified copy of the resolution of the board of directors authorizing such individual to make the withdrawal request). ☐ ATTACHED

NAME ______

RELATIONSHIP ______

4a Person having custody of the books and records of the registrant:

NAME ______

STREET ADDRESS (P.O. BOX NOT ACCEPTABLE) ______

ADDRESS ______

CITY ______ STATE ______ ZIP CODE ______

TELEPHONE (AREA CODE) ______

4b Books and records of the registrant will be located at:

STREET ADDRESS (P.O. BOX NOT ACCEPTABLE) ______

ADDRESS ______

CITY ______ STATE ______ ZIP CODE ______

5a Basis for withdrawal request: (Check where applicable)

- ☐ The registrant has ceased or has not commenced, engaging in activities requiring registration in such capacity.
- ☐ The registrant is exempt from registration in such capacity.
- ☐ The registrant is excluded from the persons or any class of persons required to be registered in such capacity.
- ☐ The registrant will cease engaging in activities requiring registration in such capacity when it becomes registered in another capacity for which it has applied for registration. New registration capacity;

______

FORM 7-W (2-88)

OMB No 3038-0023

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION FORM 7-W

Request for withdrawal from registration as a Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Leverage Transaction Merchant or NFA Membership.

WITHDRAWAL FROM FIRM REGISTRATION AND/OR NFA MEMBERSHIP

5a ☐ The registrant will cease engaging in activities requiring registration in such capacity when it merges with another firm which is already registered. Name of firm to be merged with;

____

5b Under CFTC Regulation 3.33 and NFA Rule 601, the withdrawal will become effective 30 days from the date of NFA's receipt of the request unless the Commission or NFA denies, conditions, postpones or expedites the withdrawal. Does registration need to be withdrawn at a date other than 30 days from NFA's receipt of this request?

☐ Yes ☐ No

If YES check one:

☐ Requested date: __________ (If withdrawal is requested fewer than 30 days from NFA's receipt of the request, such a request must include an attachment explaining the reasons for expediting the request. See NFA Rule 601.)

☐ ATTACHED

☐ When firm becomes registered in another capacity.

☐ When firm becomes merged with another registered firm. (Follow up with letter advising NFA of merger date).

5c Last date that activities requiring registration were or will be performed:

____

6 Answer the following items if the withdrawal request is based on the registrant being exempt from registration or excluded from the persons or any class of persons required to be registered: (Attach supplementary sheet if additional space is needed.)

a) INDICATE THE SECTION OF THE ACT, REGULATIONS OR OTHER AUTHORITY PERMITTING THE EXEMPTION OR INCLUSION ______________________________

____

b) INDICATE THE CIRCUMSTANCES WHICH ENTITLE THE REGISTRANT TO CLAIM SUCH EXEMPTION OR EXCLUSION ______________________________

____

7 If the withdrawal request is **based on the registrant having ceased engaging in activities requiring registration,** then with respect to each capacity for which the registrant has ceased such activity:

A. Have all customer or option customer agreements, if any, been terminated? ☐ YES ☐ NO*

B. Have all customer or option customer positions, if any, been transferred on behalf of customers or options customers or closed? ☐ YES ☐ NO*

If "Yes" list recipient.

____

C. In the case of an FCM, have all customers or option customers cash balances, securities or other property, if any, been transferred on behalf of customers or option customers or returned? ☐ YES ☐ NO*

If "Yes" list recipient.

____

C1. Have all obligations to customers or options customers been satisfied? ☐ YES ☐ NO*

D. In the case of a CPO, have all interests in, and assets of any commodity pool been redeemed, distributed or transferred on behalf of the participants therein? ☐ YES ☐ NO*

D1. Have all obligations to such participants been satisfied? ☐ YES ☐ NO*

E. In the case of an LTM, Have all leverage customer agreements, if any, and all leverage contracts been terminated, and all leverage customer cash balances, securities or other property, if any, been returned? ☐ YES ☐ NO*

OR

E1. Have the leverage contract obligations of the LTM been assumed by another LTM pursuant to Commission approval, and all leverage customer cash balances, securities or other property, if any, been transferred to such LTM on behalf of leverage customers or returned, and all obligations to leverage customers satisfied? ☐ YES ☐ NO*

F. Are there any pending customer, option customer, leverage customer, or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, are there any anticipated or threatened customer, option customer, leverage customer or commodity pool participant claims against the registrant? ☐ YES ☐ NO

***Furnish full details on supplemental sheet(s) or box(es)**

OMB No 3038-0023

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION FORM 7-W

Request for withdrawal from registration as a Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Floor Broker or Leverage Transaction Merchant.

7

F1. If yes, attach a statement setting forth in full the nature and extent of all such pending or anticipated or threatened claims and what provisions have been made by the registrant to satisfy such claims. ☐ ATTACHED

G. In the case of an FCM which is a party to a guarantee agreement, have all such agreements been, or will all such agreements be terminated in accordance with the provisions of CFTC Regulation §1.10(j) not more than thirty days after the filing of this request for withdrawal? ☐ YES ☐ NO*

***Furnish full details on supplemental sheet(s) or box(es)**

8 If the withdrawal request is **based on the registrant having ceased engaging in activities requiring registration,** then with respect to an IB, FCM, or LTM registration:

A. In the case of IB which is not operating pursuant to a guarantee agreement or an FCM, this request for withdrawal must be accompanied by a Form 1-FR which contains the information specified in CFTC Regulation §1.10(d)(i) as of a date not more than 30 days prior to the date of the withdrawal request. ☐ ATTACHED

B. If such FCM or IB is also registered with the SEC as a securities broker or dealer, it may file a copy of its Focus Report, Part II or Part IIA containing the information specified in CFTC Regulation §1.10(d)(i) as of a date not more than 30 days prior to the date of the withdrawal request, in lieu of Form 1-FR. ☐ ATTACHED

C. If such introducing broker is also a country elevator, it may file a copy of a financial report prepared by a grain commission firm in accordance with CFTC Regulation §1.10(i) containing the information specified in CFTC Regulation §1.10(d)(1) as of a date not more than 30 days prior to the date of the withdrawal request, in lieu of Form 1-FR. ☐ ATTACHED

D. In the case of an LTM, the request for withdrawal must be accompanied by a Form 2-FR which contains the information specified in CFTC Regulation §31.13(F) as of a date not more than 30 days prior to the date of the withdrawal request. ☐ ATTACHED

AUTHORIZATION AND CERTIFICATION

I certify that the person named in Section 4 of this Form 7-W is authorized to make all books and records of the registrant available in accordance with CFTC Regulation 1.31. Also, the undersigned has read and understands the foregoing and represents that all information contained or incorporated in this form, including the schedules attached hereto, is accurate and complete.

Authorized Signatory (President or CEO if a corporation, General Partner, or Sole Proprietor listed in item 3)

PRINT NAME ______________________ TITLE ______________________

SIGNATURE ______________________ DATE ______________________

NOTICE

ALL CLASSES EXCEPT LTM MAIL TO NATIONAL FUTURES ASSOCIATION, 200 WEST MADISON STREET, CHICAGO, ILLINOIS 60606. LTM'S SHOULD MAIL TO COMMODITY FUTURES TRADING COMMISSION, DIVISION OF TRADING AND MARKETS, 2033 K STREET N.W., WASHINGTON, D.C. 20581.

WILLFUL FALSIFICATION, MISREPRESENTATION, OR OMISSION OF ANY MATERIAL FACT REQUIRED TO BE STATED ON THIS FORM CONSTITUTES CAUSE FOR DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION AND PROSECUTION UNDER CRIMINAL STATUES OF THE INDIVIDUAL AND FIRM MAKING THE ABOVE CERTIFICATION.

BILLING CODE 6351-01-C

COMMODITY FUTURES TRADING COMMISSION NATIONAL FUTURES ASSOCIATION FORM 7-R, 7-W

Application for registration or withdrawal of registration as Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Leverage Transaction Merchant and Application for NFA Membership.

PRIVACY ACT NOTICE

The information on CFTC Form 7-R and Form 7-W is being collected pursuant to authority granted in Sections 4f, 4n, 8a and 19 of the Commodity Exchange Act [7 U.S.C. 6f, 6n, 12a and 23]. Under Section 4d of the Commodity Exchange Act [7 U.S.C. 6d], it is unlawful for anyone to act as a futures commission merchant or introducing broker without being registered in that capacity with the Commission. Under Section 4m of the Commodity Exchange Act [7 U.S.C 6m], it is unlawful for a commodity trading advisor or commodity pool operator to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a commodity trading advisor or commodity pool operator without being registered in that capacity with the Commission, except that a commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than 15 persons and does not hold himself out generally to the public as a commodity trading advisor need not register. Under Section 19 of the Commodity Exchange Act [7 U.S.C. 23] and Section 31.5 of the Commission's regulations, it is unlawful for anyone to act as a leverage transaction merchant without being registered in that capacity with the Commission.

The information requested in Form 7-R is designed to assist NFA and the Commission, as appropriate, in determining whether the application for registration should be granted or denied and to maintain the accuracy of registration files. The information in Form 7-W is designed to assist NFA and the Commission in determining whether it would be contrary to the requirements of the Commodity Exchange Act, or any rule, regulation or order thereunder, or to the public interest to permit withdrawal from registration.

All information requested on Form 7-R or 7-W, including any Schedules and supplements thereto, must be furnished before the forms will be processed. The failure by an applicant, registrant or principal to timely file a properly completed Form 7-R may result in the denial of an application for registration or withdrawal thereof or, in the case of an annual Form 7-R, treating the registrant as having petitioned for withdrawal.

With the exception of any supplementary information contained in attachments to items 9-10 on Form 7-R and to item 7 on Form 7-W, this application is considered by the Commission to be a public record and will be available for inspection by any interested person. Copies will be maintained by National Futures Association, Registration Department, Suite 1400, 200 W. Madison Street, Chicago, IL 60606 (except those for leverage transaction merchants, which will be maintained in the public reference facilities of the Commission's Office at 2033 K Street, NW, Washington, DC 20581). Further, the CFTC or NFA may disclose any such supplementary information to third parties pursuant to routine uses which the CFTC has published in the Federal Register or as otherwise authorized under the Privacy Act, 5 U.S.C. 552a, and the Commodity Exchange Act. Disclosure of such information may be made by the CFTC as follows: (1) in connection with administrative proceedings or matters in litigation; (2) in connection with investigations; (3) where the information is furnished to regulatory, self-regulatory and law enforcement or other governmental agencies to assist them in meeting responsibilities assigned to them by law; (4) where disclosure is required under the Freedom of Information Act [5 U.S.C. 552]; (5) in connection with an employer's hiring or retention of an employee; (6) in connection with the verification of information submitted for sponsorship purposes; (7) in other circumstances in which the withholding of such information appears unwarranted; and (8) in connection with legally required or authorized reports. Disclosure may be made by NFA in accordance with rules approved by the CFTC. If the applicant believes that the placing of the information contained in the attachments to items 9-10 on Form 7-R and to item 7 on Form 7-W in the Commission's or National Futures Association's public files would reveal sensitive business information, or would constitute a clearly unwarranted invasion of personal privacy, the applicant may petition the Commission, or National Futures Association, to treat such information as non-public in response to requests under the Freedom of Information Act [5 U.S.C. 552].

Forms which have not been prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Acceptance of this form shall not constitute any finding that it has been filed as required or that the information is true, current or complete. Misstatements or omissions of fact may constitute federal criminal violations [7 U.S.C. 13 and 18 U.S.C. 1001].

[FR Doc. 88-5332 Filed 3-14-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM87-34-000 through RM87-34-053; Order No. 500-D]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Order Modifying Dates

March 8, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order modifying dates.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations in order to continue in effect beyond March 31, 1988, the temporary modifications to its take-or-pay crediting provisions adopted in Order No. 500-C [1] unless changed by the final rule in this proceeding. This will give the Commission additional time to develop a final rule, while continuing to mitigate the various problems arising under crediting discussed in Order No. 500-C.

EFFECTIVE DATE: March 8, 1988.

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) 357-8274.

SUPPLEMENTARY INFORMATION:

Order Modifying Dates

Issued March 8, 1988.

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

In Order No. 500-C,[2] issued on December 23, 1987, the Commission modified until April 1, 1988, the treatment under the Order No. 500 crediting provisions of casinghead gas, gas purchased by processing plants

[1] 52 FR 48986 (Dec. 29, 1987).

[2] 52 FR 48986 (Dec. 29, 1987).

under percentage-of-proceeds operating agreements, and gas released by intrastate pipelines. The Commission made these temporary changes [3] in order to mitigate various problems caused by the interim rule's crediting provisions while the Commission developed the final rule responding to the decision of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987).

It is not practicable for the Commission to issue a final rule in this proceeding by April 1, 1988. More time is needed in order to develop a final rule in light of the voluminous comments submitted in this proceeding. In addition, the Commission must conduct a public hearing under section 502(b) of the Natural Gas Policy Act of 1978 in order to give interested persons an opportunity for an oral presentation of views. That hearing will be held on April 11 and, if necessary, April 12, 1988. The Commission will need additional time in order to consider the views expressed by the participants in that hearing.

Accordingly, the Commission has determined to continue in effect the temporary modifications to crediting adopted in Order No. 500-C unless changed by the final rule in this proceeding. Specifically, the Commission is amending §§ 284.8(f)(4)(ii), (f)(9), (f)(10)(i), and (f)(10)(ii) and 284.9(f)(4)(ii), (f)(9), (f)(10)(i), and (f)(10)(ii) by removing the deadlines previously established for these provisions. This will give the Commission additional time to develop a final rule, while continuing to mitigate the various problems arising under crediting discussed in Order No. 500-C.

The amendments to the crediting regulations adopted in this order will become effective on March 8, 1988. The Commission finds that good cause exists to make these amendments effective less than 30 days after publication in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3) (1982) since the amendments continue in effect provisions of the crediting regulations designed to relieve restrictions on the ability of producers and shippers of gas to obtain interstate transportation of gas. With respect to the substance of these changes, the Commission adopts and incorporates in support hereof the administrative findings stated in Part VI of Order No. 500.[4]

[3] The Commission also made certain other permanent changes in the Order No. 500 crediting provisions not here at issue.

[4] Order No. 500, 52 FR 30334, 30350 (August 14, 1987).

List of Subjects in 18 CFR Part 284

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142.

§ 284.8 [Amended]

2. In § 284.8, paragraph (f)(4)(ii) is amended by removing the phrase "arising from transportation performed before April 1, 1988," from the last sentence.

3. In § 284.8, paragraph (f)(9) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence of the introductory text and inserting in its place the phrase "after January 1, 1988."

4. In § 284.8, paragraph (f)(10)(i) introductory text is amended by removing the phrase "Until April 1, 1988," from the first sentence.

5. In § 284.8, paragraph (f)(10)(ii) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence and adding in its place and phrase "after January 1, 1988."

§ 284.9 [Amended]

6. In § 284.9, paragraph (f)(4)(ii) is amended by removing the phrase "arising from transportation performed before April 1, 1988," from the last sentence.

7. In § 284.9, paragraph (f)(9) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence of the introductory text and inserting in its place the phrase "after January 1, 1988."

8. In § 284.9, paragraph (f)(10)(i) introductory text is amended by removing the phrase "Until April 1, 1988," from the first sentence.

9. In § 284.9, paragraph (f)(10)(ii) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence and adding in its place the phrase "after January 1, 1988."

[FR Doc. 88-5571 Filed 3-14-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0518]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective March 15, 1988; objections by April 14, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFF-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1987 (52 FR 3350), FDA announced that a petition (FAP 7B3978) had been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) of the food additive regulations be amended to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact.

FDA has evaluated data in the petition an other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations in 21 CFR 178.3570 should be amended in paragraph (a)(3) by inserting a new item in the list of substances

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before April 14, 1988, file with the Dockets Management Branch written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3570 is amended in paragraph (a)(3) by alphabetically inserting a new entry to the table to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * *	* *
N-phenylbenzenamine, reaction products with 2,4,4-trimethylpentene (CAS Reg. No. 68411-46-1).	For use only as an antioxidant at levels not to exceed 0.5 percent by weight of the lubricant.
* * *	* *

* * * * *

Dated: March 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5618 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26, 26a, and 602

[T.D. 8187]

Estate and Gift Taxes; Effective Date Rules and Return Requirements Relating to the Generation-Skipping Transfer Tax; and OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to the temporary and final regulations relating to the effective date provisions, return requirements, and certain special rules for the tax on generation-skipping transfers. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085). These regulations affect all persons making or receiving a generation-skipping transfer. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATE: These regulations apply to all generation-skipping transfers made after October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document provides temporary generation-skipping transfer tax regulations under Chapter 13 of the Internal Revenue Code of 1986 (Code), as added by section 1431 of the Tax Reform Act of 1986 (the Act), concerning the effective date, return requirements, and certain special rules. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject. By a separate notice of proposed rulemaking appearing elsewhere is this issue of the **Federal Register,** the regulations promulgated in this document are also proposed to be prescribed as final generation-skipping transfer tax regulations (26 CFR Part 26) under sections 2601 and 2662.

In General

Chapter 13, as amended by the Act, imposed a flat-rate tax on all noncharitable transfers of propety that result in the avoidance of the estate or gift tax in one or more generations below that of the transferor. Certain exceptions to the generation-skipping transfer tax are provided for gifts excluded from tax under sections 2503 (b) and (e), transfers covered by the $1,000,000 exemption as defined in section 2631, and direct transfers to grandchildren to the extent that the aggregate amount of such transfers does not exceed $2 million per grandchild ("the grandchild exclusion"). The latter exception applies only to transfers that occur before January 1, 1990. See sections 1433(b)(3) and 1433(d) of the Act and § 26.2601-1(d) of these regulations.

Generation-skipping transfers are taxed at the applicable rate as defined in section 2641. This rate is equal to the product of the maximum Federal estate tax rate (55% for 1987–1992) and the inclusion ratio (as defined in section 2642(a)).

These regulations provide rules relating to the effective date provisions in section 1433 of the Act and return requirements. Because Congress is currently considering major technical revisions to Chapter 13, it was considered inappropriate to promulgate rules addressing other areas in the statute. After Congress has concluded its deliberations, substantive regulations, directed at issues where guidance is most needed, will be promulgated. The Internal Revenue Service requests comments identifying these issues. Additional comprehensive regulations will also be published in the future.

Effective Dates

The Chapter 13 tax as enacted in 1976 has been repealed, retroactive to June 11, 1976. Those persons who paid tax under the prior Chapter 13 are entitled to a refund or credit. The time and manner of filing a claim for such refund is provided in § 26.2601–1(c)(2)(ii) of these regulations.

Chapter 13 of the Code, as added by the Internal Revenue Code of 1986, generally applies to inter vivos transfers occurring after September 25, 1985, and to all transfers occurring after October 22, 1986. The generation-skipping transfer tax does not apply, however, to certain transfers under trusts that were irrevocable on September 25, 1985; transfers occurring under certain wills and revocable trusts executed before October 22, 1986; and certain transfers by a decedent if the decedent was under a mental disability on October 22, 1986. The effective date rules are set forth in section 1433 of the Act and § 26.2601–1(b) of these regulations.

Special Rules

A direct skip is a transfer that is subject to estate or gift tax and that is made to a skip person (as defined in section 2613). Section 1433(b)(3) of the Act provides that the term "direct skip" shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent that the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000 (the "grandchild exclusion").

These regulations do not provide rules for determining when a transfer in trust for the benefit of a grandchild will qualify for the grandchild exclusion because the issue is currently being considered by Congress. However, these regulations do provide guidance regarding the special election provided by section 1433(d) of the Act. That election allows a transferor to elect to treat certain inter vivos and testamentary contingent transfers in trust for the benefit of a grandchild as a direct transfer to the grandchild qualifying the transfers for the grandchild exclusion. The rules for this election are set forth in § 26.2601–1(d).

Return Requirements

These regulations specify the time and manner in which a generation-skipping transfer must be reported to the Internal Revenue Service. The due date for a return depends upon the type of event that gives rise to liability for the tax. Generally, the person liable for the tax is required to file the return. In general, in the case of a direct skip (other than a direct skip from a trust), the transferor or the transferor's executor is liable for the tax and must make the return. In the case of a taxable termination or a direct skip from a trust, the trustee is liable for the tax and must make the return. In the case of a taxable distribution, the distributee is liable for the tax and must make the return. However, the regulations also set forth special return requirements for certain direct skips at death under trusts. The return requirement rules are set forth in § 26.2662–1.

Need for Temporary Regulations

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

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The requirements have been approved by OMB (control number 1545–0985).

Drafting Information

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

List of Subjects

26 CFR Part 26

Estate taxes, Generation-skipping transfer.

26 CFR Part 26a

Estate taxes, Generation-skipping transfer, Tax Reform Act of 1976.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 26a—[REMOVED]

Paragraph 1. Part 26a Temporary Generation-Skipping Transfer Tax Regulations Under the Tax Reform Act is removed.

Par. 2. Part 26 is revised to read as follows:

PART 26—TEMPORARY GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Authority: 26 U.S.C. 7805. Section 26.2662–1 also issued under 26 U.S.C. 2662.

§ 26.2600–1 Table of contents.

This section lists the captions that appear in the temporary regulations under sections 2601 and 2662

(a) *Section 26.2601–1 Effective dates.*

a. Transfers subject to the generation-skipping transfer tax.
  1. In general.
  2. Certain transfers deemed made after October 22, 1986.
b. Exceptions.
  1. Irrevocable trusts.
    i. In general.
    ii. Irrevocable trust defined.

(b) Section 26.2662-1 Generation-skipping transfer tax return requirements.

§ 26.2601-1 Effective dates.

(a) *Transfers subject to the generation-skipping transfer tax*—(1) *In general.* Except as otherwise provided in this section, the provisions of Chapter 13 of the Internal Revenue Code of 1986 (the Code) apply to any generation-skipping transfer, as defined in section 2611, made after October 22, 1986.

(2) *Certain transfers deemed made after October 22, 1986.* For purposes of Chapter 13 and paragraph (a)(1) of this section, any inter vivos transfer that was—

(i) Subject to a tax imposed by Chapter 12, and

(ii) Made after September 25, 1985, and before October 23, 1986.

shall be treated as if it were made on October 23, 1986. Where such inter vivos transfer was made to a trust, any subsequent distribution from such trust or termination of an interest in such trust that occurred before October 23, 1986, shall be treated as if the distribution from the trust or termination of interest in the trust occurred immediately after the deemed transfer on October 23, 1986. In the case of multiple transfers to, distributions from, and/or terminations with respect to a trust, all such events shall be treated as if they occurred on October 23, 1986, in the same order as they actually occurred. See paragraph (b)(iv)(B) of this section for rules to determine the portion of such distributions and terminations subject to tax under Chapter 13. This paragraph (a)(2) shall not apply to transfers to trusts covered by the transition rules of paragraphs (b)(2) and (b)(3) of this section.

(b) *Exceptions*—(1) *Irrevocable trusts*—(i) *In general.* The provisions of Chapter 13 will not apply to any generation-skipping transfer under a trust (as defined in section 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a portion of any generation-skipping transfer under an irrevocable trust where additions are made to the trust after Sepember 25, 1985. See paragraph (b)(1)(iv) of this section for rules to determine the portion of such trust subject to the provisions of Chapter 13.

(ii) *Irrevocable trust defined*—(A) *In general.* Unless otherwise provided in either paragraph (b)(1)(ii)(B) or (b)(1)(ii)(C) of this section, any trust (as defined in section 2652(b)) in existence on September 25, 1985, will be considered an irrevocable trust.

(B) *Property includible in estate under section 2038.* A trust will not be considered an irrevocable trust to the extent that, on September 25, 1985, the settlor held a power with respect to such trust that would have caused the value of the trust to be included in the settlor's gross estate for federal estate tax purposes by reason of section 2038 (without regard to powers relinquished before September 25, 1985) if the settlor had died on September 25, 1985. A trust will be considered subject to a power on September 25, 1985, even though the exercise of the power was subject to the precedent giving of notice, or even though the exercise could take effect only on the expiration of a stated period, whether or not on or before September 25, 1985, notice had been given or the power had been exercised. A trust will not be considered subject to a power if the power is, by its terms, exercisable only on the occurrence of an event or contingency not subject to the settlor's control (other than the death of the settlor) and if the event of contingency had not in fact taken place on September 25, 1985.

(C) *Property includible in estate under section 2042.* A policy of insurance on an individual's life that is treated as a trust under section 2652(b) will not be considered an irrevocable trust to the extent that, on September 25, 1985, the insured possessed any incident of ownership (as defined in § 20.2042-1(c)), that would have caused the value of the trust (*i.e.*, the insurance proceeds) to be included in the insured's gross estate for federal estate tax purposes by reason of section 2042, if the insured had died on September 25, 1985.

(D) *Examples.* The following examples illustrate the application of this paragraph (b)(1).

Example (1). On September 25, 1985, S, the settlor of a trust that was created before September 25, 1985, held a testamentary power to add new beneficiaries to the trust. S held no other powers over any portion of the trust. The testamentary power held by S would have caused the trust to be included in S's gross estate under section 2038 if S had died on September 25, 1985. Therefore, the trust is not an irrevocable trust for purposes of this section.

Example (2). On September 25, 1985, W, the wife of the settlor of a trust in existence on that date, had an annual right to withdraw a portion of the corpus of such trust. The trust was otherwise irrevocable on that date. Because the power was not held by the settlor of the trust, it is not a power described in section 2038 of the Code. Thus, the trust is considered an irrevocable trust for purposes of this section.

Example (3). In 1984, A created a trust and retained the right to expand the class of remaindermen to include any of A's afterborn grandchildren. As of September 25, 1985, all of A's grandchildren were named remaindermen of the trust. Since the exercise of A's power was dependent on there being afterborn grandchildren who were not members of the class of remaindermen, a contingency that did not exist on September 25, 1985, the trust is not considered subject to the power on September 25, 1985, and is an irrevocable trust for purposes of this section. The result is not changed even if grandchildren are born after September 25, 1985, whether or not A exercises his power to expand the class of remaindermen.

Example (4). On September 25, 1985, B purchased an insurance policy on her own life and designated her daughter, D, and granddaughter, GD, as the beneficiaries. B retained the power to obtain from the insurer a loan against the surrender value of the policy. B's insurance policy is a trust (as defined in section 2652(b)) for Chapter 13 purposes. This trust will not be considered an irrevocable trust because, on September 25, 1985, B possessed an incident of ownership that would have caused the value of the policy to be included in B's gross estate under section 2042 if B had died on that date.

Example (5). In 1984, S created a trust naming S's grandchildren as the income and remainder beneficiaries. S retained the power to revoke one-half of the value of the trust at any time prior to S's death. S retained no other powers over the trust corpus. S did not die before September 25, 1985, nor did S exercise or release the power before that date. The half of the trust not subject to S's power to revoke is considered to be irrevocable.

(iii) *Trust containing qualified terminable interest property*—(A) *In general.* For purposes of Chapter 13, a trust described in paragraph (b)(1)(ii) of this section that holds qualified terminable interest property by reason of an election under section 2056(b)(7) or section 2523(f) will be treated in the same manner as if the donor spouse had made an election under section 2652(a)(3). Thus, transfers from such trusts will not be subject to Chapter 13, and the donor spouse will be treated as the transferor of such property. See paragraph (b)(1)(v)(C) of this section for rules concerning the treatment of the trust when estate tax otherwise payable out of property in the trust is not paid out of such property.

(B) *Examples.* The following examples illustrate the application of this paragraph (b)(i)(iii).

Example (1). On March 28, 1985, H established a trust. The trust instrument provided that the trustee must distribute all income annually to H's wife, W, during her life. Upon W's death the remainder is to be distributed to H and W's grandson, GS. H elected under section 2523(f) to treat the property in the trust as qualified terminable interest property. On December 1, 1987, W died and soon thereafter the trust assets were distributed to GS. Because the trust was irrevocable on September 25, 1985, the transfer to GS will not be subject to tax under Chapter 13. H will be treated as the transferor with respect to the transfer of the trust assets to GS in the same manner as if H had made an election under section 2652(a)(3) to reverse the effect of the section 2523(f) election for Chapter 13 purposes.

Example (2). Assume the same facts as in example (1) except that the trust instrument provides that after W's death all income is to be paid annually to H and W's daughter, D. Upon D's death the remainder is to be distributed to GS. D dies on October 1, 1995, and soon thereafter the trust assets are distributed to GS. Because the trust was irrevocable on September 25, 1985, the termination of D's interest is not subject to Chapter 13.

(iv) *Additions to irrevocable trusts*—(A) *In general.* An addition made after September 25, 1985, to an irrevocable trust, which is excluded from Chapter 13 by reason of paragraph (b)(1) of this section, will subject a proportionate amount of distributions from, and terminations of interests in property held in, such trust to the provisions of Chapter 13. When an addition is made, the trust shall be deemed to consist of two portions, a portion not subject to Chapter 13 (the "non-Chapter 13 portion") and a portion subject to Chapter 13 (the "Chapter 13 portion"), each with a separate inclusion ratio (as defined in section 2642(a)). The non-Chapter 13 portion represents the value of the assets of the trust as it existed on September 25, 1985. The applicable fraction (as defined in section 2642(a)(2)) for the non-Chapter 13 portion is deemed to be 1 and the inclusion ratio for such portion is 0. The Chapter 13 portion of the trust represents the value of all additions made to the trust after September 25, 1985. The inclusion ratio for the Chapter 13 portion shall be determined under section 2642. This paragraph requires separate portions of one trust only for purposes of determining inclusion ratios. For purposes of Chapter 13, a constructive addition under paragraph (b)(1)(v) of this section shall be treated as an addition. See paragraph (b)(4) for exceptions to the additions rule of this paragraph (b)(1)(iv) of this section.

(B) *Terminations of interests in and distributions from trusts.* Where a termination or distribution described in section 2612 occurs with respect to a trust to which an addition has been made, the portion of such termination or distribution allocable to the Chapter 13 portion is determined by reference to the allocation fraction, as defined in paragraph (b)(1)(iv)(C) of this section. In the case of a termination described in section 2612(a) with respect to a trust, the portion of such termination that is subject to Chapter 13 is the product of the allocation fraction and the value of the trust (to the extent of the terminated interest therein). In the case of a distribution described in section 2612(b) from a trust, the portion of such distribution that is subject to Chapter 13 is the product of the allocation fraction and the value of the property distributed.

(C) *Allocation fraction*—(*1*) *In general.* The "allocation fraction" is a fraction that allocates appreciation and accumulated income between the Chapter 13 and non-Chapter 13 portions of a trust. The numerator of the allocation fraction is the amount of the addition (valued as of the date the addition was made) determined without regard to whether or not any part of the transfer is subject to tax under Chapter 11 or Chapter 12. The denominator of the allocation fraction is the total value of the entire trust immediately after the addition. For purposes of this section, the phrase "total value of the entire trust" means the fair market value of the property held in trust (determined under the rules of section 2031) reduced by any amount attributable to the trust that is similar to an amount that would be allowable as a deduction under section 2053. Where there is more than one addition to corpus after September 25, 1985, the portion of the trust subject to Chapter 13 after each such addition will be determined pursuant to a revised fraction. In each case, the numerator of the revised fraction is the sum of—

(*i*) The value of that portion of the trust immediately before the latest addition that, because of prior additions, is subject to Chapter 13, and

(*ii*) The amount of the latest addition. The denominator of the revised fraction is the total value of the entire trust immediately after the addition. If the transfer to the trust is a generation-skipping transfer, the numerator and denominator shall be reduced by the amount of the generation-skipping transfer tax, if any, which is imposed by Chapter 13 on the transfer and actually recovered from the trust. The allocation fraction shall be rounded off to five decimal places (.00001).

(*2*) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(iv).

Example (1). On August 16, 1980, A established an irrevocable trust. Under the trust instrument, the trustee is required to distribute the entire income annually to A's child, C, for life, then to A's grandchild, GC, for life. Upon GC's death, the remainder is to be paid to GC's issue. On October 1, 1986, when the total value of the entire trust was $400,000, A transferred $100,000 to the trust. The allocation fraction is computed as follows:

$$\frac{\text{Value of addition}}{\text{Total value of trust}} = \frac{\$100{,}000}{\$400{,}000 + \$100{,}000} = .2$$

Thus, immediately after the transfer, 20 percent of the value of future generation-skipping transfers under the trust will be subject to Chapter 13.

Example (2). Assume the same facts as in example (1) except that immediately prior to the transfer on October 1, 1986, the fair market value of the individual assets in the trust totaled $400,000. Also assume that the trust had accrued and unpaid debts, expenses, and taxes totaling $300,000. Assume further that the entire $300,000 represented amounts that would be deductible under section 2053 if the trust were includible in a decedent's gross estate. Thus, the numerator of the allocation fraction is $100,000 and the denominator of the allocation fraction is $200,000 [($400,000–$300,000) + $100,000]. Thus, the allocation fraction is .5 ($100,000/$200,000) and 50 percent of the value of future generation-skipping transfers will be subject to Chapter 13.

Example (3). Assume the same facts as in example (1) except that on January 30, 1988, when the total value of the entire trust is $600,000, A transfers an additional $40,000 to the trust. Before the transfer, the value of the portion of the trust that was attributable to the prior addition was $120,000 [$600,000 × .2]. The new allocation fraction is computed as follows:

$$\frac{\text{Total value of additions}}{\text{Total value of trust}} = \frac{\$120{,}000 + \$40{,}000}{\$600{,}000 + \$40{,}000} = \frac{\$160{,}000}{\$640{,}000} = .25$$

Thus, immediately after the transfer, 25 percent of the value of future generation-skipping transfers under the trust will be subject to Chapter 13.

Example (4). Assume the same facts as in example (3) except that on March 1, 1989, when the value of the trust is $800,000, C dies. A generation-skipping transfer occurs at C's death because of the termination of C's life estate. Therefore, $200,000 [$800,000 × .25] is subject to tax under Chapter 13.

(v) *Constructive additions*—(A) In general. Except as provided below, where any portion of a trust remains in the trust after the release, exercise, or lapse of a power of appointment over that portion of the trust, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed will be treated as an addition to the trust. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under Chapter 11 or Chapter 12. In the latter case, the transferor for purposes of Chapter 11 or Chapter 12 is the transferor for purposes of Chapter 13.

(B) *Special rule for certain powers of appointment.* The release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in section 2041(b)) will not be treated as an addition to a trust if—

(*1*) Such power of appointment was created in an irrevocable trust that is not subject to Chapter 13 under paragraph (b)(1) of this section, and

(*2*) In the case of an exercise, such power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. If a power is exercised by creating another power it will be deemed to be exercised to whatever extent the second power may be exercised.

(C) *Constructive addition if liability is not paid out of trust corpus.* Where a trust described in paragraph (b)(1) of this section is relieved of any liability properly payable out of the assets of such trust, the person or entity who actually satisfies the liability will be considered to have made a constructive addition to the trust in an amount equal to the liability. The constructive addition occurs when the trust is relieved of liability (*i.e.*, when the right of recovery is no longer enforceable). For example, where an estate fails to exercise the right of recovery available under section 2207A for federal estate tax paid on the value of property includible in the estate under section 2044, the beneficiaries of the estate are considered to have added an amount equal to such federal estate tax attributable to such property to the trust at the time the right of recovery lapses.

(D) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(v).

Example (1) On June 19, 1980, H established an irrevocable trust with a corpus of $500,000. The trust instrument provides that the trustee shall distribute the entire income from the trust annually to H's wife, W, during her life. At W's death the remainder is to be distributed to H and W's grandson, GS. H also gave W a general power of appointment over one-half of the trust assets. On December 21, 1989, when the value of the trust corpus is $1,500,000, W dies without having exercised her general power of appointment. The value of one-half of the trust corpus, $750,000 [$1,500,000 × .5], is included in W's gross estate under section 2041(a) and is subject to tax under Chapter 11. Because the value of one-half of the trust corpus is subject to tax under Chapter 11 with respect to W's estate, W is treated as the transferor of that property for purposes of Chapter 13 (see section 2652(a)(1)(A)). For purposes of the generation-skipping transfer tax, the lapse of W's power of appointment is treated as if $750,000 [$1,500,000 × .5] had been distributed to W and then transferred back to the trust. Thus, W is considered to have added $750,000 [0.5 × $1,500,000] to the trust at the date of her death. Because this constructive addition occurred after September 25, 1985, 50 percent of the corpus of the trust became subject to Chapter 13 at W's death.

Example (2). Assume the same facts as in example (1) except that on October 1, 1985, when the trust assets were valued at $800,000, H added $200,000 to the trust. After the transfer on October 1, 1985, the allocation fraction was .2 [$200,000/$1,000,000]. On December 21, 1989, when the value of the trust corpus is $1,500,000, W dies without having exercised her general power of appointment. The lapse of W's general power of appointment is treated as if one-half of the corpus had been distributed to W and then transferred by W back to the trust. The value of the property in the trust immediately prior to the constructive addition (*i.e.* after the deemed distribution to W) would have been $750,000. Thus, after this constructive distribution and constructive addition the new allocation fraction is 0.6 [$900,000/$1,500,000]. The numerator of the fraction is the value of that portion of trust assets that were subject to Chapter 13 immediately prior to the addition (by reason of the first addition) $150,000 [0.2 × $750,000], plus the value of the constructive transfer, $750,000, which equals $900,000. The denominator of the fraction, $1,500,000, is the total value of the trust assets immediately after the transfer. Thus, 60 percent of the corpus of the trust became subject to Chapter 13.

Example (3). On September 25, 1985, B possessed a general power of appointment over the assets of an irrevocable trust that had been created by C in 1980. Under the terms of the trust, B's power lapsed on July 20, 1987. For federal gift tax purposes, B is treated as making a gift of ninety-five percent [100% −5%] of the value of the corpus (see section 2514). However, because the entire trust was subject to the power of appointment, 100 percent (that portion of the trust subject to the power) of the assets of the trust are treated as a constructive addition. Thus, the entire amount of all generation-skipping transfers occurring pursuant to the trust instrument after July 20, 1987, will be subject to Chapter 13.

Example (4). On March 1, 1985, H established an irrevocable trust as defined in paragraph (b)(1)(ii) of this section. Under the terms of the trust instrument, the trustee is required to distribute the entire income annually to H's son, S, for life, then to H's grandchild, GS, for life. GS has the power to appoint any or all of the trust assets to Trust 2 which is an irrevocable trust (as defined in paragraph (b)(1)(ii) of this section) that was established on August 1, 1985. The terms of Trust 2's governing instrument provide that the trustee shall pay income to H's greatgrandson, GGS, for life. Upon GGS's death the remainder is to be paid to GGS's issue. GGS was alive on March 1, 1985, when Trust 1 was created. S died on April 1, 1986. On July 1, 1987, GS exercised the power of appointment. The exercise of GS's power will not subject future transfers pursuant to Trust 2 to tax under Chapter 13 because exercise of the power in favor of Trust 2 does not suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of Trust 1, extending beyond any life in being at the date of creation of Trust 1 plus a period of 21 years.

Example (5). Assume the same facts as in example (4) except that GS established Trust 2 on June 1, 1987. The exercise of GS's power will not cause future transfers pursuant to Trust 2's governing instrument to be subject to Chapter 13.

Example (6). Assume the same facts as in example (5) except that GGS was born on March 28, 1986. The exercise of GS's power in favor of Trust 2 will cause the corpus of Trust 1 to be subject to Chapter 13, because GGS was not born until after the creation of Trust 1. Thus, such exercise may suspend the vesting, absolute ownership, or power of alienation of an interest in the trust corpus for a period, measured from the date of creation of Trust 1, extending beyond any life in being at the date of creation of Trust 1 plus a period of 21 years.

(vi) *Appreciation and income.* Except to the extent that the provisions of paragraphs (b)(2) (i) and (ii) of this section allocate subsequent appreciation and accumulated income between the original trust and additions thereto, appreciation in the value of the trust and undistributed income added thereto will not be considered an addition to the corpus of a trust.

(2) *Transition rule for wills or revocable trusts executed before October 22, 1986*—(i) *In general.* The provisions of Chapter 13 will not apply to any generation-skipping transfer under a will or revocable trust executed before October 22, 1986, provided that—

(A) The document in existence on October 21, 1986, was not amended at any time after October 21, 1986, in any respect which results in the creation of, or an increase in the amount of, a generation-skipping transfer,

(B) In the case of a revocable trust, no addition was made to the revocable trust after October 21, 1986, which results in the creation of, or an increase in the amount of, a generation-skipping transfer, and

(C) The decedent died before January 1, 1987.

(ii) *Revocable trust defined.* For purposes of this section, the term "revocable trust" means any trust (as defined in section 2652(b)) except to the extent that, on October 22, 1986, the trust—

(A) Was an irrevocable trust described in paragraph (b)(1) of this section, or

(B) Would have been an irrevocable trust described in paragraph (b)(1) of this section had it not been created or become irrevocable after September 25, 1985, and before October 22, 1986.

(iii) *Will or revocable trust containing qualified terminable interest property.* The rules contained in paragraph (b)(1)(iii) of this section shall apply to any will or revocable trust covered by the transition rule of this paragraph (b)(2).

(iv) *Amendments to will or revocable trust.* For purposes of this section, an amendment to a will or a revocable trust in existence on October 21, 1986, will not be considered to result in the creation of, or an increase in the amount of, a generation-skipping transfer where the amendment is—

(A) Basically administrative or clarifying in nature and only incidentally increases the amount transferred, or

(B) Designed to ensure that an existing bequest or transfer qualifies for the applicable marital or charitable deduction for estate, gift, or generation-skipping transfer tax purposes and only incidentally increases the amount transferred to a skip person.

For purposes of determining whether a particular amendment to a will or revocable trust creates, or increases the amount of, a generation-skipping transfer, the effect of the instrument(s) in existence on October 21, 1986, will be measured against the effect of the instrument(s) in existence on the date of death of the decedent or on the date of any prior generation-skipping transfer. If the effect of an amendment cannot be immediately determined, it will be deemed to create, or increase the amount of, a generation-skipping transfer until a determination can be made.

(v) *Additions to revocable trusts.* Except as provided below, any addition made after October 21, 1986, but before the death of the settlor, to a revocable trust will subject all subsequent generation-skipping transfers under the trust to the provisions of Chapter 13. All additions made to a revocable trust after the death of the settlor (if the settlor dies before January 1, 1987) will be treated as additions to an irrevocable trust. See § 26.2601–1(b)(1)(v) for rules involving constructive additions to trusts. See § 26.2601–1(b)(1)(V)(B) for rules providing that certain transfers to trusts will not be treated as additions for purposes of this section.

(vi) *Examples.* The following examples illustrate the application of paragraph (b)(2)(iv) of this section. In the following examples, assume that the testator dies on December 31, 1986.

Example (1). On November 1, 1986, A executes a codicil to a will that was in existence on October 21, 1986, removing one of the co-executors named in the will. Although the codicil may have the effect of lowering administrative costs and thus increasing the amount transferred, it will be considered administrative in nature and thus it will not cause generation-skipping transfers under the will to be subject to Chapter 13.

Example (2). On November 1, 1986, B executes a codicil to his will that was in existence on October 21, 1986, revoking a bequest of $100,000 to C, a non-skip person (as defined under section 2613(b)) and causing that amount to be added to a residuary trust containing generation-skipping provisions. Such an amendment will be deemed to increase a generation-skipping transfer and will prevent any transfers under the will from qualifying under paragraph (b)(2)(i) of this section. If, however, C dies before B and under local law the property would have been added to the residue in any event because the bequest would have lapsed, the codicil will not be considered an amendment that increases a generation-skipping transfer.

Example (3). On October 21, 1986, D's will provided that an amount equal to the maximum allowable marital deduction would pass to D's spouse with the residue of the estate passing to a trust established for the benefit of skip persons. On October 23, 1986, the will is amended to provide that the marital share passing to D's spouse shall be the lesser of the maximum allowable marital deduction or the minimum amount which will result in no estate tax liability for D's estate. The amendment may increase the amount of a generation-skipping transfer. Therefore any generation-skipping transfers under the will will be subject to tax under Chapter 13. If it becomes apparent that the amendment did not increase the amount of a generation-skipping transfer, a claim for refund may be filed with respect to any generation-skipping transfer tax that was paid within the period set out in section 6511.

Example (4). On October 21, 1986, C's will provided for the creation upon C's death of two trusts for the benefit of skip persons. On November 1, 1986, C executed a codicil to the will specifically increasing the amount of a generation-skipping transfer under the will. All transfers made pursuant to the will or either of the trusts created thereunder are precluded from qualifying under the transition rule of paragraph (b)(2)(i) of this section and are therefore subject to tax under Chapter 13.

Example (5). Assume that C in example (4) later executed a second codicil deleting the increase to the generation-skipping transfer. Because the provision increasing a generation-skipping transfer did not become effective it will not be considered an amendment to a will in existence on October 22, 1986.

Example (6). Prior to October 22, 1986, S created a trust in which S retained the power to revoke the transfer at any time prior to S's death. The trust provided that upon the death of S the income was to be paid to S's spouse, W, for life and then to S's nephews A, B, and C (none of whom were skip persons) in equal shares for life, with one-third of the corpus to be distributed per stirpes to each nephew's surviving issue upon the death of the nephew. A became disabled and S modified the trust on December 1, 1986, to increase A's share of the income. Since the amendment did not result in the creation of, or increase the amount of, a generation-skipping transfer, transfers pursuant to the trust will not be subject to Chapter 13.

Example (7). Assume the same facts as in example (6) except that A, B, and C are skip persons (as defined in section 2613). S's amendment of the trust increasing A's share of the income will subject the trust to the provisions of Chapter 13 because the amendment increases the amount of a generation-skipping transfer.

Example (8). Assume the same facts as in example (7) except that S's amendment of the trust adds S's grandchild, D, as an income beneficiary. The trust will be subject to the provisions of Chapter 13 because this amendment creates a generation-skipping transfer.

Example (9). Assume the same facts as in example (6) except that the amendment adds S's brother, B, as a beneficiary. B's issue are to take a one-fourth share of the corpus per stirpes upon B's death. Because the distribution to be made upon B's death may involve skip persons, the amendment will be considered an amendment that creates or increases a generation-skipping transfer until a determination can be made. Accordingly, all distributions from and terminations of interests in such trust shall be subject to Chapter 13 until it is determined that no skip person has been added to the trust. At that time a claim for refund may be filed within the period set out in section 6511 with respect to any generation-skipping transfer tax that was paid.

(3) *Transition rule in the case of mental incompetency*—(i) *In general.* Where an individual was, on October 22, 1986, under a mental disability to change the disposition of his or her property and did not regain his or her competence to dispose of such property before the date of his or her death, the provisions of Chapter 13 shall not apply to any generation-skipping transfer—

(A) Under a trust (as defined in section 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual (other than property transferred by or on behalf of the individual during his life after October 22, 1986), or

(B) Which is a direct skip that occurs by reason of the death of the decedent.

(ii) *Mental disability defined.* For purposes of this section, the term "mental disability" means mental incompetence to execute an instrument governing the disposition of the decedent's property, whether or not there was an adjudication of incompetence and whether or not there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or the care of the decedent's property.

(iii) *Decedent who has not been adjudged mentally incompetent.* If the decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706, either—

(A) A certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or

(B) Sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician.

(iv) *Decedent who has been adjudged mentally incompetent.* If the decedent has been adjudged mentally incompetent, a copy of the judgment or decree, and any modification thereof, must be filed with the Form 706.

(v) *Rule applies even if another person has power to change trust terms.* In the case of a transfer from a trust, this paragraph (b)(3) shall apply even though a person charged with the care of the decedent or the decedent's property has the power to revoke or modify the terms of the trust, provided that the power is not exercised after October 22, 1986, in a manner that creates, or increases the amount of, a generation-skipping transfer. See paragraph (b)(3)(i) of this section for rules concerning amendments that create or increase the amount of a generation-skipping transfer.

(4) *Exceptions to additions rule.* (i) *In general.* Any addition to a trust made pursuant to an instrument or arrangement covered by the transition rules in paragraphs (b)(2) or (b)(3) will not be treated as an addition for purposes of this section. Moreover, any property transferred inter vivos to a trust will not be treated as an addition if the same property would have been added to the trust pursuant to an instrument covered by the transition rules in paragraph (b)(2) or (b)(3) of this section.

(ii) *Examples.* The following examples illustrate the application of paragraph (b)(4)(i) of this section.

Example (1). On December 31, 1980, A created an irrevocable trust having a corpus of $100,000. Under the terms of the trust, the corpus was to be held for the benefit of A's grandchild, GC. Pursuant to the terms of A's will, a document entitled to relief under the transition rule of paragraph (b)(2) of this section, the residue of the estate was paid to the trust. Because the addition to the trust was paid pursuant to the terms of an instrument (A's will) which was not subject to the provisions of Chapter 13 because of paragraph (b)(2) of this section, the payment to the trust is not considered an addition to the corpus of the trust. Thus, future distributions to or for the benefit of GC, will not be subject to the provisions of Chapter 13.

Example (2). H is the grantor of a trust which was irrevocable on September 25,

1985. H's will, which was executed before October 22, 1986, and not amended thereafter, provides that upon his death the entire estate will pour over into his trust. On October 1, 1985, H transfers $100,000 to the trust. While H's will otherwise qualifies for relief under the transition rule in paragraph (b)(2) of this section, the transition rule is not applicable unless A dies prior to January 1, 1987. Thus, if H dies after December 31, 1986, the transfer will be treated as an addition to the trust for purposes of any distribution made from the trust after the transfer to the trust on October 1, 1985. If H dies before January 1, 1987, the entire trust (as well as any distributions from or terminations of interests in the trust prior to his death) will be excluded, under paragraphs (b)(2) of this section, from Chapter 13 because the $100,000 would have been added to the trust under a will which would have qualified under paragraph (b)(2) of this section. In either case, for any generation-skipping transfers made after the transfer to the trust on October 1, 1985, but before H's death, the $100,000 will be treated as an addition to the trust and a proportionate amount of the trust will be subject to Chapter 13.

Example (3). H and W are the settlors of separate revocable trusts with equal values. Both trusts were established for the benefit of skip persons (as defined in section 2613). W dies on December 1, 1985, and under the provisions of her trust the corpus pours over into H's trust. If H dies before January 1, 1987, the entire trust is excluded under paragraph (b)(2) of this section from the operation of Chapter 13. If H dies after December 31, 1986, the entire trust is subject to the generation-skipping transfer tax provisions because H's trust is not a trust described in paragraph (b)(1) or (b)(2) of this section. In the latter case, the fact that W died before January 1, 1987, is irrelevant because the corpus of her trust was added to a trust that never qualified under the transition rules of paragraph (b)(1) or (b)(2) of this section.

Example (4). Assume the same facts as in example (3) except that upon the death of W on December 1, 1985, her trust continues as an irrevocable trust and that the corpus of H's trust is to be paid over upon his death to W's trust. Again, if H dies before January 1, 1987, W's entire trust falls within the provisions of paragraph (b)(1) of this section. However, if H dies after December 31, 1986, the "pour-over" is considered an addition to the trust. Therefore, W's trust is not a trust excluded under paragraph (b) (2) because an addition is made to the trust.

Example (5). A, the spouse of the settlor of an irrevocable trust that was created in 1980, had, on September 25, 1985, a general power of appointment over the trust assets. The trust provides that should A fail to exercise the power of appointment the property is to remain in the trust. On October 21, 1986, A executed a will under which A failed to exercise the power of appointment. If A dies before January 1, 1987, without having exercised the power in a manner which results in the creation of, or increase in the amount of, a generation-skipping transfer (or amended the will in a manner that results in the creation of, or increase in the amount of, a generation-skipping transfer), transfers pursuant to the trust or the will will not be subject to Chapter 13 because the trust is an irrevocable trust and the will qualifies under paragraph (b)(2) of this section.

Example (6). Assume the same facts as in example (5) except that on October 22, 1986, A did not have a will. Upon A's death, or upon the prior exercise or release of the power, the value of the entire trust will be treated as having been distributed to A, and A will be treated as having made an addition to the trust in the amount of the entire corpus. All subsequent distributions or terminations pursuant to the trust will be subject to Chapter 13. It is immaterial whether A's death occurs before January 1, 1987, since paragraph (b)(2) of this section is only applicable where a will or revocable trust was executed before October 22, 1986.

(c) *Transfers before October 22, 1986*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, transfers before October 22, 1986, are not subject to generation-skipping transfer tax. In the case of any tax imposed by Chapter 13 of the Internal Revenue Code of 1954 (as in effect on October 21, 1986), such tax (including interest, additions to tax, and additional amounts) will not be assessed and if assessed, the assessment will be abated, and if collected, will be credited or refunded (with interest) as an overpayment, upon filing of a claim for credit or refund.

(2) *Refunds of overpayments*—(i) *Waiver of statute of limitations.* Except as provided below, a refund or credit of any payment of tax referred to in paragraph (c)(1) of this section shall be allowed without regard to whether, at any time before October 22, 1987, such refund or credit is barred by law.

(ii) *Time and manner in which a claim for a credit or refund must be filed.* A claim for a refund or credit, that would otherwise be barred by the statute of limitations but for paragraph (c)(2)(i) of this section, must be filed on or before the later of October 22, 1987, or the expiration of the period for filing a claim set out in section 6511 and the regulations thereunder. To claim a refund, Form 843 must be filed in accordance with the instructions thereto.

(d) *$2,000,000 grandchild exclusion*—(1) *In general.* For purposes of this chapter, the term "direct skip" shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000. For purposes of the preceding sentence, section 2612(c)(2) shall not apply in determining whether an individual is a grandchild of the transferor.

(2) *Treatment of transfers in trust.* [Reserved]

(3) *Election for certain contingent transfers*—(i) *In general.* A transferor may elect to treat certain transfers in trust for the benefit of the transferor's grandchild as a direct skip to a grandchild thereby qualifying it for the $2,000,000 grandchild exclusion as defined in this paragraph (d). The election is available only to the extent that the transfer occurred before October 22, 1986, and would be a transfer that would qualify for the $2,000,000 grandchild exclusion except for the fact that the trust instrument provides that; if the grandchild dies before vesting of the interest transferred as defined in paragraph (d)(3)(ii) of this section, the interest passes to any person other than the grandchild's estate. This election is available only if during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild. This election is not available if the trust has more than one grandchild as a beneficiary. If a transferor makes an election under this paragraph (d)(3) with respect to a transfer, such transfer shall be subject to federal estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate. If all or a portion of a transferor's generation-skipping transfer exemption was previously allocated to property with respect to which a valid election is made under this paragraph (d)(3), such allocation will be deemed to be ineffective without regard to section 2631(b). In addition, if a transferor paid tax imposed by Chapter 13 on the transfer of property with respect to which a valid election is made under this paragraph (d)(3), such transferor may obtain a refund of such tax by filing Form 843 on or before June 13, 1988. The election once made is irrevocable.

(ii) *Vesting defined.* For purposes of this paragraph (d)(3), an interest in property is vested only if the entire value of the transferred property in which such interest is held will be includible in the grandchild's gross estate for federal estate tax purposes.

(iii) *Manner of election.* The election described in this paragraph (d)(3) is made by attaching a notice of election to a Form 709 filed with the appropriate district office of the Internal Revenue Service within the time set out in paragraph (d)(3)(v) of this section. The notice of election must be signed by both the grandchild (or the grandchild's guardian) and the holders of the contingent gift over (or their authorized representative) and must contain an agreement that:

(A) The property subject to the election or the proceeds thereof, together with any accumulated income therefrom, will be included in the grandchild's estate for federal estate tax purposes even if it is not otherwise includible in such grandchild's estate, and

(B) The estate of the grandchild will have the right of recovery described in paragraph (d)(3)(vi) of this section.

(iv) *Information to be included in the election.*

(A) The notice of election shall also contain the following information:

(*1*) A statement describing the grandchild's right of recovery under paragraph (d)(3)(vi) of this section;

(*2*) The transferor's name and taxpayer identification number as they appear on the generation-skipping transfer tax return;

(*3*) The trust's taxpayer identification number and a copy of the trust instrument;

(*4*) The name, address, and taxpayer identification number of all trust beneficiaries including the holders of the contingent gift over;

(*5*) The transferor's adjusted basis of the transferred property;

(*6*) The date of the transfer;

(*7*) The fair market value of the property at the date of the transfer;

(*8*) A detailed description of the transferred property;

(B) For real estate provide:

(*1*) A legal description of each parcel;

(*2*) The street number, name, and the area if the property is located in a city; and

(*3*) A short statement of improvements made to the property;

(C) For bonds, provide:

(*1*) The number of bonds transferred;

(*2*) The name of obligor;

(*3*) The date of maturity;

(*4*) The rate of interest;

(*5*) The date or dates when interest is payable;

(*6*) The series number if there is more than one issue; and

(*7*) The CUSIP number, if available. The CUSIP number is a nine digit number assigned by the American Banking Association to traded securities.

(D) For stocks provide:

(*1*) The number of shares;

(*2*) The exact name of the corporation;

(*3*) Whether the stock is common or preferred;

(*4*) The issue and par value;

(*5*) The location of the principal business office, the State in which incorporated, and the date of incorporation, if unlisted;

(*6*) The principal exchange where sold, if listed; and

(*7*) The CUSIP number, if available. The CUSIP number is a nine digit number assigned by the American Banking Association to traded securities.

For interests in property based on the length of a person's life, provide the date of birth of the person. For life insurance policies, provide the name of the insurer and the policy number.

(v) *Time for election.* The election provided by this paragraph (d)(3) must be made on or before June 13, 1988.

(vi) *Right of recovery in grandchild's estate*—(A) *In general.* The election must contain an agreement granting the grandchild's estate the right to recover the estate tax (including penalties and interest thereon) attributable to the value of property included in the gross estate solely by reason of an election under this paragraph (d)(3) from the person or persons to whom the property is transferred. The amount of estate tax attributable to such property is the amount by which the total tax under chapter 11 which has been paid, exceeds the total tax under chapter 11 which would have been payable if the value of such property had not been included in the gross estate. Nothing herein should be construed to prohibit the grandchild from directing his executor not to pursue the right of recovery otherwise available under the terms of the agreement.

(B) *More than one recipient of property.* For purposes of this paragraph (d)(3), if there is more than one contingent beneficiary of the property, the agreement may provide that the right of recovery shall apply jointly to all such beneficiaries or it may provide that the estate tax liability be apportioned among such persons according to the relative values of their interests at the time of the inclusion. However, the agreement must provide that the right of recovery shall be against each such contingent beneficiary.

(vii) *Examples.* The following examples illustrate the application of this paragraph (d)(3). Assume in each example that the trust satisfies all requirements for the $2,000,000 grandchild exclusion except as set forth below and that all requirements of the election under this paragraph (d)(3) are satisfied.

Example (1). On September 16, 1986, A established a trust and funded it with $1,000,000. The trust instrument provides that the trust assets shall be transferred to A's grandson, GS, when he attains the age of 30, but if he dies before reaching 30, the assets shall be distributed to GS's heirs. GS is 10 years old at the time of the transfer. The transfer does not qualify for the $2,000,000 grandchild exclusion under paragraph (d)(1) of this section. On April 1, 1987, A elects under this paragraph (d)(3) to treat the transfer as a direct skip to GS. Assuming A's aggregate transfers to GS, up to and including this transfer, do not exceed $2,000,000, the transfer is not subject to tax under Chapter 13.

Example (2). Assume the same facts as in example (1) except that GS dies intestate on March 1, 1988, and GS's mother and father receive the property as GS's heirs. Because of the agreement contained in the notice of election, the property in the trust will be subject to federal estate tax in GS's gross estate in the same manner as if the contingent gift over had been to GS's estate. GS's executor will have a right of recovery against GS's mother and father for the estate taxes attributable to property included in GS's gross estate.

Example (3). Assume the same facts as in example (1) except that the trust instrument provides for payments of income to GS for life, with the remainder to A's greatgrandson, GGS. A is not eligible to make the election under this paragraph (d)(3) because, under the terms of the trust instrument, there is not a contingent gift over.

§ 26.2662-1 Generation-skipping transfer tax return requirements.

(a) *In general.* Chapter 13 imposes a tax on generation-skipping transfers (as defined in section 2611). The requirements relating to the return of tax depend on the type of generation-skipping transfer involved. This section contains rules for filing the required tax return. Paragraph (c)(2) of this section provides special rules concerning the return requirements for generation-skipping transfers pursuant to certain trust arrangements (as defined in paragraph (c)(2)(ii) of this section) such as life insurance policies and annuities.

(b) *Form of return*—(1) *Taxable distributions.* Form 706GS(D) must be filed in accordance with its instructions for any taxable distribution (as defined in section 2612(b)). The trust involved in a transfer described in the preceding sentence must file Form 706GS(D-1) in accordance with its instruction. A copy of Form 706GS(D-1) shall be sent to each distributee.

(2) *Taxable terminations.* Form 706GS(T) must be filed in accordance with its instructions for any taxable termination (as defined in section 2612).

(3) *Direct skip*—(i) *Inter vivos direct skips.* Form 709 must be filed in accordance with its instructions for any direct skip that is subject to a tax imposed by Chapter 12 and occurs during the life of the transferor.

(ii) *Direct skips occurring at death*—(A) *In general.* Form 706 must be filed in accordance with its instructions for any direct skips that are subject to a tax imposed by Chapter 11 and occur at the death of the decedent.

(B) *Direct skips payable from a trust.* Schedule R–1 of Form 706 must be filed in accordance with its instructions for any direct skip from a trust if such direct skip is subject to a tax imposed by Chapter 11. See paragraph (c)(2) of this section for special rules relating to the person liable for tax and required to make the return under certain circumstances.

(c) *Person liable for tax and required to make return*—(1) *In general.* Except as otherwise provided in this section, the following person is liable for the tax imposed by section 2601 and must make the required tax return—

(i) The transferee in a taxable distribution (as defined in section 2612 (b)).

(ii) The trustee in the case of a taxable termination (as defined in section 2612 (a)).

(iii) The transferor (as defined in section 2652(a)(1)(B)) in the case of an inter vivos direct skip (as defined in section 2612(c)).

(iv) The trustee in the case of a direct skip from a trust or with respect to property that continues to be held in trust, or

(v) The executor in the case of a direct skip (other than a direct skip described in paragraph (c)(1)(iv) of this section) if the transfer is subject to a tax imposed by Chapter 11. See paragraph (c)(2) of this section for special rules relating to direct skips to or from certain trust arrangements (as defined in paragraph (c)(2)(ii) of this section).

(2) *Special rule for direct skips occurring at death with respect to property held in trust arrangements*—(i) *In general.* In the case of certain property held in a trust arrangement (as defined in paragraph (c)(2)(ii) of this section) at the transferor's date of death, the person who is required to make the return and who is liable for the tax imposed by Chapter 13 is determined under paragraph (c)(2)(iii) of this section.

(ii) *Trust arrangement defined.* For purposes of this § 26.2662–1, the term "trust arrangement" includes any arrangement (other than an estate) which, although not an explicit trust, has the same effect as an explicit trust. For purposes of this § 26.2662–1, the term "explicit trust" means a trust described in § 301.7701–4 (a).

(iii) *Executor liable if transfer less than $100,000.* In any case of a director skip occurring at death, the executor of the decedent's estate shall be liable for the tax imposed on that direct skip by Chapter 13 and is required to file Form 706 (and not Schedule R–1 of Form 706) if, at the date of the decedent's,—

(A) The property involved in the direct skip is held in a trust arrangement, and

(B) The total value of the property invovled in direct skips with respect to the trustee of that trust arrangement is less than $100,000.

In cases where the rule of this paragraph (c)(2)(iii) imposes liability for the generation-skipping transfer tax on the executor, the executor shall be entitled to recover, from the trustee (if the property continues to be held in trust) or from the recipient of the property (in the case of a transfer from a trust), the generation-skipping transfer tax attributable to the transfer.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(2).

Example (1). On August 1, 1988, A, the insured under an insurance policy, died. The proceeds ($95,000) were includible in A's gross estate for federal estate tax purposes. A's grandchild GC, was named the sole beneficiary of the policy. The insurance policy is treated as a trust under section 2652(b)(1), and the payment of the proceeds to GC is a transfer "from a trust" for purposes of Chapter 13. Therefore, the payment of the proceeds to GS is a direct skip. Since the proceeds from the policy ($95,000) are less than $100,000, the executor is liable for the tax imposed by Chapter 13 and is required to file Form 706.

Example (2). Assume the same facts as in example (1) except that A is the insured under two insurance policies issued by the same insurance company. The proceeds ($75,000) from each policy were includible in A's gross estate for federal estate tax purposes. A's grandson, GS, was named the sole beneficiary of Policy 1 and A's granddaughter, GD was named the sole beneficiary of Policy 2. GS and GD are skip persons (as defined in section 2613). Therefore, the payments of the proceeds are direct skips. Since the total value of the policies ($150,000) exceeds $100,000, the insurance company is liable for the tax imposed by Chapter 13 and is required to rile Schedule R–1 of Form 706.

Example (3). On August 1, 1988, A, the insured under an insurance policy, dies. The policy provides that the insurance company shall make monthly payments of $750 to GC, A's grandchild, for life with the remainder payable to A's greatgrandchild, GGC. The face value of the policy is $110,000. Since the proceeds will continue to be held by the insurance company (the trustee), the proceeds are treated as if they were transferred to a trust for purposes of Chapter 13. The trust is a skip person (as defined in section 2613 (a) (2)) and the transfer is a direct skip. Since the total value of the policy ($110,000) exceeds $100,000, the insurance company is liable for the tax imposed by Chapter 13 and is required to file Schedule R–1 of Form 706.

Example (4). Assume the same facts as in example (3) except that the policy provides that the insurance company shall make monthly payments of $500 to GC and that the face value of the policy is $95,000. The transfer is a transfer to a trust for purposes of Chapter 13. However, since the total value of the policy ($95,000) is less than $100,000, the executor is liable for the tax imposed by Chapter 13 and is required to file Form 706.

(3) *Limitation on personal liability of trustee.* A trustee shall not be personally liable for any increases in the tax imposed by section 2601 which is attributable to the fact that—

(i) A transfer was made to the trust during the life of the transferor for which a gift tax return was not filed, or

(ii) The inclusion ratio with respect to the trust, determined by reference to the transferor's gift tax return, is erroneous, the actual inclusion ratio being greater.

This paragraph (c)(3) shall not apply if the trustee has or is deemed to have knowledge of facts sufficient to reasonably conclude that a gift tax return was required to be filed or that the inclusion ratio was erroneous. A trustee will be deemed to have knowledge of such facts if the trustee's agent, employee, partner, or co-trustee has knowledge of such facts.

(4) *Exceptions*—(i). *Minors.* Where a distributee who is a minor is otherwise required to make a return, the return may be made for the minor by the minor's guardian or, if no guardian has been appointed, by a person charged with the care of the minor's person or property.

(ii) *Returns made by fiduciaries.* See section 6012 (b) and the regulations thereunder for a fiduciary's responsibilities regarding the returns of decedents, returns of persons under a disability, returns of estates and trusts, and returns made by joint fiduciaries.

(d) *Time and manner of filing return*—(1) *In general.* Forms 706, 706GS(D), 706GS(D–1), 706GS(T), 709, and Schedule R–1 of Form 706 must be filed with the Internal Revenue Service office with which an estate or gift tax return of the transferor must be filed. The return shall be filed—

(i) In the case of a direct skip, on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer (see section 6075 (b) (3)), and

(ii) In all other cases, on or before the 15th day of the 4th month after the close of the calendar year in which such transfer occurs.

(2) *Exceptions*—(i) *Inter vivos direct skips made after September 25, 1985, and on or before October 22, 1986.* The return with respect to the tax imposed by Chapter 13 on any inter vivos direct skip after September 25, 1985, and on or before October 22, 1986, must be filed on or before May 2, 1988.

(ii) *Taxable distributions and taxable terminations occurring after September 25, 1985, before January 1, 1988.* If the person liable for the tax under this chapter is required to file Form 706GS(T) or 706GS(D), with respect to a transfer which occurred after September 25, 1985, and before January 1, 1988, the return shall be filed on or before a date to be specified in an announcement that will appear in the Internal Revenue Bulletin.

(iii) *Direct skips at death.* The due date for any return with respect to the tax imposed by Chapter 13 or any direct skip attributable to the death of the decedent shall be no earlier than June 13, 1988.

(e) *Place for filing returns.* See section 6091 and the regulations thereunder for the place for filing any return, declaration, statement, or other document, or copies thereof, required by this chapter.

(f) *Lien on property.* The liens imposed under sections 6324, 6324A, and 6324B are applicable with respect to the tax imposed under Chapter 13. Thus, a lien under 6324 is imposed in the amount of the tax imposed by section 2601 on all property transferred in a generation-skipping transfer until the tax is fully paid or becomes uncollectible by reason of lapse of time. The lien attaches at the time of the generation-skipping transfer and is in addition to the lien for taxes under section 6321.

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 26.2601-1 . . . 1545-0985" and "§ 26.2662-1 . . . 1545-0985".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

February 24, 1988.

[FR Doc. 88-5501 Filed 3-14-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

Public Safety Officers' Death Benefits

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The regulations covering public safety officers' death benefits and the appendix to those regulations are being amended to comply with statutory amendments to the Public Safety Officers' Benefits (PSOB) Act. Changes to the regulation include provision of coverage for members of public rescue squads or ambulance crews whose deaths result from traumatic injuries sustained while responding to a fire, rescue or police emergency.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Yvette Caesar (Attorney Advisor), 202-724-6235.

SUPPLEMENTARY INFORMATION: The purpose of the amendment is to extend coverage of the Public Safety Officers' Benefits Act to include an officially recognized or designated public employee member of a rescue squad or ambulance crew who dies as a direct and proximate result of a personal injury sustained while responding to a fire, rescue or public emergency.

The regulations are not a "major rule" under the requirements of Executive Order 12291. A Regulatory Analysis is not required by the Regulatory Flexibility Act. 5 U.S.C. 601-612. The provisions of the Paperwork Reduction Act, 44 U.S.C. 3504(h), do not apply. An environmental impact statement is not required by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Firefighters, Law enforcement officers.

For the reasons set out in the preamble, Title 28, Part 32 and Subpart A of the Code of Federal Regulations are amended as follows.

PART 32—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

1. The authority for 28 CFR Part 32 is revised to read as follows:

Authority: Secs. 801(a) and 1204(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, Pub. L. 98-473, Pub. L. 99-570 and Pub. L. 99-591).

2. Section 32.1 is revised to read as follows:

§ 32.1 Purpose.

The purpose of this regulation is to implement the Public Safety Officers' Benefits Act of 1976 which authorizes the Office of Justice Programs, Bureau of Justice Assistance to pay a benefit of $50,000 to specified survivors of public safety officers, rescue squad and ambulance crew members found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The Act is Part J of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, Pub. L. 98-473, Pub. L. 99-570, and Pub. L. 99-591.

§ 32.2 [Amended]

3. Section 32.2 is amended by revising paragraphs (c) and (h), redesignating paragraphs (k), (l), (m), (n), (o), (p), (q), and (r) as paragraphs (l), (m), (n), (o), (p), (q), (r), and (u), and adding new paragraphs (k), (s), and (t) to read as follows:

* * * * *

(c) (1) "Line of duty" means any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires in obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires, and

(2) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulations, condition of employment or service, or law to perform while responding to a fire, rescue or police emergency.

* * * * *

(h) "Public safety officer" means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member or ambulance crew member.

* * * * *

(k) "Rescue squad or ambulance crew member" means an officially recognized or designated employee or member of a rescue squad or ambulance crew who was responding to a fire, rescue, or police emergency.

(s) "Public employee" means an employee of a public agency.

(t) "Rescue" means the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing or in imminent danger of bodily harm.

George A. Luciano,

Director, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

Date: March 7, 1988.

[FR Doc. 88-5568 Filed 3-14-88; 8:45 am]

BILLING CODE 4410-18-M

[Attorney General Order No. 1256-88]

28 CFR Part 50

Procedures Governing the Destruction of Contraband Drug Evidence in the Custody of Federal Law Enforcement Authorities

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 28 CFR, Part 50, by adding a new section, § 50.21, establishing the drug destruction policy of the Department of Justice for the timely destruction of unnecessary seized contraband drugs. This final rule is intended to prevent the warehousing of large quantities of seized contraband drugs which are unnecessary for due process in criminal cases. Such stockpiling of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States. It is necessary since the retention of controlled substances and the continuing acquisition of additional amounts pose increased storage problems. The procedures established herein will permit destruction of unnecessary seized controlled substances, and provide for the retaining of an amount that will be sufficient for evidentiary purpose.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis F. Hoffman, Chief Counsel, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537. Telephone (202) 633-1276.

SUPPLEMENTARY INFORMATION: The Attorney General has determined that procedures are necessary to provide for the timely destruction of unnecessary seized contraband drugs and to prevent the warehousing of large quantities of such drugs which are unnecessary for due process in criminal cases. The maintenance of large quantities of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States. The procedures adopted herein will allow for the destruction of unnecessary contraband drugs and will thereby facilitate the retention of quantities sufficient for evidentiary purposes. The notice of proposed rulemaking was published in the **Federal Register** on October 8, 1987, (52 FR 37630 to 37631) to amend 28 CFR, Part 50, by adding a new section, § 50.21. This proposed rulemaking provided the opportunity for interested parties to submit comments or objections in writing on or before November 9, 1987. Two comments were received.

The first comment was a letter dated November 5, 1987, from Clyde E. Robbins, Rear Admiral, United States Coast Guard, Chief, Office of Operations. Admiral Robbins' comments concerned the destruction of marijuana and other controlled substances seized at sea by the Coast Guard as part of its interdiction responsibilities. Admiral Robbins stated that the policies set forth in the proposed rule did not satisfactorily address the issues concerning the contraband seized by the Coast Guard at sea. He suggested that independent authority and standards for destruction of excessive contraband at sea should be included as part of the final rule. The ability to destroy excess contraband which is unnecessary for prosecution would alleviate many of the security and administrative problems related to the Coast Guard seizures. He concluded by suggesting that after appropriate photographing and sampling, the seized contraband be destroyed at sea, and not returned to the United States for testing.

The Coast Guard proposal raises several issues which go beyond the proposed rule. One of those issues concerns the destruction of evidence without prior consultation with the appropriate prosecutor. A second issue concerns the feasibility, propriety and legality of depositing at sea large quantities of marijuana and other drugs, and whether such action would be contrary to existing domestic and international rules concerning environmental protection. Accordingly, Admiral Robbins' suggestion has been referred simultaneously to the Criminal Division and the Land and Natural Resources Division of the Department of Justice for appropriate review and comment. A final decision on Admiral Robbins' suggestions must await such analysis.

A second comment was received from Richard S. Frank, Chief, Forensic Sciences Section, Office of Science and Technology of the Drug Enforcement Administration. Mr. Frank noted that section (e)(5) of the proposed rule requires that the Drug Enforcement Administration and the Federal Bureau of Investigation:

> Maintain the retained portions of the contraband drugs in appropriate laboratory or division vaults until the evidence is no longer required for legal proceedings * * *

Mr. Frank suggested that the words "*in appropriate laboratory of division vaults*" be removed from the procedures. He stated that the inclusion of the six underlined words places unnecessary restrictions on the storage of the seized drugs, and he noted that their removal from the suggested procedures would not in any way effect the intent of the proposed rule. In order respects, Mr. Frank enthusiastically supported the proposed rule.

The comments of Mr. Frank are well-taken. Since it is the responsibility of the Drug Enforcement Administration and/or the Federal Bureau of Investigation to appropriately secure any and all evidence, it is immaterial to the interests of justice where that evidence is secured. Conceivably, the laboratory or division vaults of the Drug Enforcement Administration or the Federal Bureau of Investigation could be incapable of containing all the seized contraband drugs necessary for prosecution. This final rule adopts the suggestion by eliminating the words "*in appropriate laboratory or division vaults*" from section (e)(5) of the proposed rule.

This is not a major rule within the meaning of Executive Order 12291. It will not have a substantial impact on a significant number of small businesses whose interests must be considered under the Regulatory Flexibility Act. 5 U.S.C. 605.

List of Subjects in 28 CFR Part 50

Drugs, Drug traffic control, Law enforcement.

Under the authority vested in the Attorney General, including 28 U.S.C. 509, 510; 5 U.S.C. 301, and 21 U.S.C. 811(a), 28 CFR Part 50 is amended to read as follows:

PART 50—[AMENDED]

1. The authority citation for Part 50 is amended to read as follows:

Authority: 28 U.S.C. 508, 509, 510, 516, 517, 518, 519; 5 U.S.C. 301, 552, 552a, 15 U.S.C. 16(d), E.O. 11247; 3 CFR (1964-65 Comp.) 348, 21 U.S.C. 881(f)(2).

2. Part 50 is amended by adding a new § 50.21 to read as follows:

§ 50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.

(a) *General.* The procedures set forth below are intended as a statement of policy of the Department of Justice and will be applied by the Department in exercising its responsibilities under Federal law relating to the destruction of seized contraband drugs.

(b) *Purpose.* This policy implements the authority of the Attorney General under Title I, section 1006(c)(3) of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 which is codified at 21 U.S.C. 881(f)(2), to direct the destruction, as necessary, of Schedule I and II contraband substances.

(c) *Policy.* This regulation is intended to prevent the warehousing of large quantities of seized contraband drugs which are unnecessary for due process in criminal cases. Such stockpiling of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States.

(d) *Definitions.* As used in this subpart, the following terms shall have the meanings specified:

(1) The term "Contraband drugs" are those controlled substances listed in Schedules I and II of the Controlled Substances Act seized for violation of that Act.

(2) The term "Marijuana" is as defined in 21 U.S.C. 801(15) but does not include, for the purposes of this regulation, the derivatives hashish or hashish oil for purposes of destruction.

(3) The term "Representative sample" means the exemplar for testing and a sample aggregate portion of the whole amount seized sufficient for current criminal evidentiary practice.

(4) The term "Threshold amount" means:

(i) Two kilograms of a mixture or substance containing a detectable amount of heroin;

(ii) Ten kilograms of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecognine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (d)(4)(ii) (A) through (C) of this section;

(iii) Ten kilograms of a mixture or substance described in paragraph (d)(4)(ii)(B) of this section which contains cocaine base;

(iv) Two hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) Twenty grams of a mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD);

(vi) Eight hundred grams of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4-piperidiny] propanamide [commonly known as fentanyl] or two hundred grams of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl propanamide; or

(vii) Twenty kilograms of hashish or two kilograms of hashish oil [21 U.S.C. 841(b)(1)(D), 960(b)(4)].

In the event of any changes to Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1) as amended occurring after the date of these regulations, the threshold amount of any substance therein listed, except marijuana, shall be twice the minimum amount required for the most severe mandatory minimum sentence.

(e) *Procedures.* Responsibilities of the Federal Bureau of Investigation and Drug Enforcement Administration. When contraband drug substances in excess of the threshold amount or in the case of marijuana a quantity in excess of the representative sample are seized pursuant to a criminal investigation and retained in the custody of the Federal Bureau of Investigation or Drug Enforcement Administration, the Agency having custody shall:

(1) Immediately notify the appropriate United States Attorney, Assistant United States Attorney, or the responsible state/local prosecutor that the amount of seized contraband drug exceeding the threshold amount and its packaging, will be destroyed after sixty days from the date notice is provided of the seizures, unless the agency providing notice is requested in writing by the authority receiving notice not to destroy the excess contraband drug; and

(2) Assure that appropriate tests of samples of the drug are conducted to determined the chemical nature of the contraband substance and its weight sufficient to serve as evidence before the trial courts of that jurisdiction; and

(3) Photographically depict, and if requested by the appropriate prosecutorial authority, videotape, the contraband drugs as originally packaged or an appropriate display of the seized contraband drugs so as to create evidentiary exhibits for use at trial; and

(4) Isolate and retain the appropriate threshold amounts of contraband drug evidence when an amount greater than the appropriate threshold amount has been seized, or when less than the appropriate threshold amounts of contraband drugs have been seized, the entire amount of the seizure, with the exception of marijuana, for which a representative sample shall be retained; and

(5) Maintain the retained portions of the contraband drugs until the evidence is no longer required for legal proceedings, at which time it may be destroyed, first having obtained consent of the United States Attorney, an Assistant United States Attorney, or the responsible state/local prosecutor;

(6) Notify the appropriate United States Attorney, Assistant United States Attorney, or the responsible state/local prosecutor to obtain consent to destroy the retained amount or representative sample whenever the related suspect(s) has been a fugitive from justice for a period of five years. An exemplar sufficent for testing will be retained consistent with this section.

(f) *Procedures.* Responsibilities of the United States Attorney or the District Attorney (or equivalent state/local prosecutorial authority). When so notified by the Federal Bureau of Investigation or the Drug Enforcement Administration of an intent to destroy excess contraband drugs, the United States Attorney or the District Attorney (or equivalent) may:

(1) Agree to the destruction of the contraband drug evidence in excess of the threshold amount, or for marijuana in excess of the representative sample, prior to the normal sixty-day period. The United States Attorney, or the District Attorney (or equivalent) may delegate to his/her assistants authority to enter into such agreement; or

(2) Request an exception to the destruction policy in writing to the Special Agent in Charge of the responsible division prior to the end of the sixty-day period when retaining only the threshold amount or representative sample will significantly affect any legal proceedings; and

(3) In the event of a denial of the request may appeal the denial to the Assistant Attorney General, Criminal Division. Such authority may not be redelegated. An appeal shall stay the destruction until the appeal is complete.

(g) *Supplementary regulations.* The Federal Bureau of Investigation and the Drug Enforcement Administration are authorized to issue regulations and establish procedures consistant with this section.

Dated: February 18, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-5229 Filed 3-14-88; 8:45 am]

BILLING CODE 4410-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning April 1, 1988. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after April 1, 1988, and will remain in effect until the PBGC issues new interests rates and factors.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilties that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1986 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since March 1, 1988 (53 FR 4135 (February 12, 1988)). Changes in the financial and annuity markets now require a decrease in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after April 1, 1988, which set reflects a decrease of ¼ percent in the immediate interest rate to 7¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after April 1, 1988, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007-11009, 11016(c)(12)-(c)(13) and 11011(a), Pub. L. 99-272, 100 Stat. 239-240, 244-252, 274 and 253-257 and by secs. 9312-13, Pub. L. 100-203, 101 Stat. 1330.

2. Rate Set 72 of Appendix B is revised and Rate Set 73 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred Annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
72	3-1-88	4-1-88	8.00	1.0725	1.0600	1.0400	7	8
73	4-1-88		7.5	1.0700	1.0575	1.0400	7	8

Joseph A. Vasquez, Jr.,
Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-5570 Filed 3-14-88; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of April 1988.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month:	The values of i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{u}
*		*		*		*		*		*		*				
April 1988	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 9th day of March 1988.

Joseph A. Vasquez, Jr.,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-5569 Filed 3-14-88; 8:45 am]

BILLING CODE 7708-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 203

[Docket 87-6A]

Freedom of Information Act; Schedule of Fees and Methods of Payments for Services Rendered

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is published to inform the public that the Copyright Office of the Library of Congress is adopting proposed regulation 37 CFR 203.6 as a final regulation without change. The purpose of the regulation is to bring the fee schedule and fee waiver regulations of the Copyright Office into compliance with appropriate provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), the OMB Administration Regulations issued pursuant to that Act, and the Justice Department fee waiver policy guide dated April 2, 1987. The effect of this regulation is to establish the fee schedule which will be applied to requests for copies under the Freedom of Information Act and the conditions under which fees will be modified or waived.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 requires agencies to charge for direct costs of providing FOIA services such as search, duplication, and in certain cases, review. It also requires that agencies promulgate procedures and guidelines for determining when such fees should be reduced or waived. On January 5, 1988 the Copyright Office published proposed rules that meet the requirements of the Act, the OMB regulations, and the Justice Department guidelines (53 FR 153). The Office received no comments on the proposed rules and now makes them final without change.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1940, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies and defined in the Administrative Procedure Act. Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 203

Freedom of information.

Final Regulation

In consideration of the foregoing, the Copyright Office amends Part 203 of 37 CFR, Chapter II.

PART 203—[AMENDED]

1. The authority citation for Part 203 would continue to read as follows:

Authority: Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 203.6 is revised as follows:

§ 203.6 Schedule of fees and methods of payment for services rendered.

(a) *General.* The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act of 1976, Title 17 of the United States Code (Pub. L. 94-553) requires a fee to be charged. The fees required to be charged are contained in section 708 of Title 17 U.S.C., or have been established by the Register of Copyrights or Library of Congress pursuant to the requirements of that section. If the Copyright Office receives a request for copies or other services involving the public records or indexes of the Office or for copies of deposited articles for which a fee is required to be charged, the Office will notify the requester of the procedure established to obtain the copies or services and the amount of the chargeable fees. Fees pursuant to Title 5 U.S.C., section 552 for all other services not involving the public records of the Copyright Office will be assessed according to the schedule in paragraph (b) of this section. All fees so assessed shall be charged to the requester, except where the charge is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requests by record subjects asking for copies of records about themseleves shall be processed under the Privacy Act fee schedule found in 37 CFR 204.6.

(b) *FOIA Requests.* In responding to requests under this part the following fees shall be assessed, unless a waiver or reduction in fees has been granted pursuant to paragraph (d) of this section:

(1) For copies of certificates of copyright registration, $4.

(2) For copies of all other Copyright Office records not otherwise provided for in this section $.45 per page.

(e) For each hour or fraction of an hour spent in searching for a requested record, $10, except that no search fee shall be assessed with respect to requests by educational institutions, non-commercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Fees may be assessed for time spent searching even if the search fails to locate any responsive records or where the records located are subsequently determined to be entirely exempt from disclosure.

(4) For certification of each document, $4.

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost of the Office.

(6) For computer searches of records, which may be undertaken through the use of existing programing, the actual direct costs of conducting the search including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to search (at no more than $10.00 per hour or fraction thereof so spent).

(7) No review fees will be charged for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all such records may be withheld.

(c) *Fee limitations.* The following limitations on fees shall apply:

(1) Except for requesters seeking records for commercial use the following will be provided without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(2) No fees will be charged for ordinary packaging and mailing costs.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Office determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Office shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosures: Whether disclosure of the requested information will contribute to "public understanding."

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as praticable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the requests will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Copyright Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregation of requests.* Where the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly.

(g) *Advance payments.* (1) Where the Office estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Office may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the Office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (g)(2) of this section, the Office shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component of the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of billing.

Dated: February 29, 1988.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 88-5663 Filed 3-14-88; 8:45 am]

BILLING CODE 1410-07-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6780]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: March 16, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community number	Effective date
North Carolina	Andrews, Town of	Cherokee	370060	March 16, 1988.
Do	Asheville, City of	Buncombe	370032	Do.
Do	Unincorporated Areas	Avery	370010	Do.
Do	Blowing Rock, Town of	Watauga	370252	Do.
Do	Crossnore, Town of	Avery	370287	Do.
Do	Dillsboro, Town of	Jackson	370136	Do.
Do	Elk Park, Town of	Avery	370382	Do.
Do	Unincorporated Areas	Graham	370105	Do.
Do	Unincorporated Areas	Madison	370152	Do.
Do	Marshall, Town of	Madison	370154	Do.
Do	Unincorporated Areas	Polk	370194	Do.
Do	Sylva, Town of	Jackson	370137	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–5583 Filed 3–14–88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 25

[General Docket 84-1234; RM-4247]

Rules To Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; extending time for reply comments.

SUMMARY: This action extends the time for filing replies to an opposition to the Petition for Further Reconsideration. The action responds to a request for extension filed by various aviation parties. The aviation parties point out that coordination problems arose between multiple entities while formulating their reply. They state that these difficulties are being resolved but that 3 extra days are needed to finalize the reply. They argue that a 3 day extension should not delay the Commission's decision in this proceeding. In order to obtain as complete a record as possible in this proceeding, the Commission is extending the time for filing replies to February 26, 1988.

DATES: Reply comments are now due February 26, 1988.

ADDRESS: Federal Communications Commission; Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, Office of Engineering and Technology, (202) 653-8117.

SUPPLEMENTARY INFORMATION: The Memorandum Opinion and Order in Gen. Docket No. 84-1234, RM-4247, FCC 87-302, adopted September 17, 1987 and released November 9, 1987, *summary published*, 52 FR 44985, November 24, 1987.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 88-5624 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

Pears, Plums, and Peaches Grown in California; Proposed Increase in Expenses for 1987-88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the Pear Commodity Committee established under Marketing Order 917 for the 1987-88 fiscal year. The expenses would be increased from $899,551 to $910,111. The increase reflects higher than estimated costs for market development and promotion activities undertaken by the pear committee in marketing the 1987 crop.

DATES: Comments must be received by March 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-5464.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Order No. 917 [7 CFR Part 917] regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

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

There are approximately 43 handlers of California pears under this marketing order, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $899,551 for the Pear Commodity Committee for the fiscal period ending February 29, 1988, was published in the **Federal Register** on August 20, 1987 [52 FR 31375]. That action also fixed the assessment rate to be levied on pear handlers during the 1987-88 fiscal period. At at meeting held on January 27, 1988, the Pear Commodity Committee voted unanimously to increase its budget of expenses from $899,551 to $910,111.

The committee incurred higher than expected market development and promotion costs in marketing the 1987 pear crop. The proposed increase is needed to cover these expenses.

No change in assessment rate was recommended by the committee. Adequate funds are available to cover any proposed increase in expenses for the Pear Commodity Committee that may result from this action.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval needs to be expedited. The committee needs to have authority to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, pears, plums, peaches, California.

For the reasons set forth in the preamble, it is proposed that § 917.247 be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

2. Section 917.249 is amended as follows:

This section will not be published in the Code of Federal Regulations.

§ 917.249 [Amended]

Section 917.249 is amended by changing "$899,551" to "$910,111."

Dated: March 10, 1988.

Robert C. Keeney,

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

[FR Doc. 88-5658 Filed 3-14-88; 8:45 a.m.]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Safety Requirements for Industrial Radiographic Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations that apply to industrial radiography. Licensees would be required to use radiographic exposure devices and associated equipment that provide additional safety features and radiographers would be required to wear pocket alarm dosimeters. The

proposed requirements are intended to reduce radiation exposures to both radiography personnel and the general public from the use of radiographic equipment. The proposed amendments would affect persons licensed to perform industrial radiography and manufacturers of radiographic equipment. The proposed amendments would not affect x-ray radiography or devices incorporating naturally occurring or accelerator produced radioactive material.

DATE: Comment period expires May 16, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Copies of a regulatory analysis and a finding of no significant environmental impact prepared for this proposed rule may be examined at: The NRC Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. Nellis, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3628.

SUPPLEMENTARY INFORMATION:

Background

Industrial radiography is a technique of nondestructive testing which uses radioactive sources or x-rays to detect flaws in welds, and cracks, breaks and other structural deficiencies in bridges, pipelines and manufactured articles. Most industrial radiography operations are conducted using gamma-ray emitting sources, although x-rays and neutrons can also be used. The procedure for taking radiographs is similar to the procedure used for taking medical x-rays except that a radioactive source is generally used in place of an x-ray machine. The operating principal of all of the devices is similar. Most radiography operations involve projecting a radioactive source out of its shielded position within the device; some devices, such as the so called "pipeliner," utilize a shutter to allow the radiation beam to exit from a shielded position within the device.

The general procedure is as follows. First, a radiation sensitive film is positioned over the area of interest on the item to be examined. Then a radiography exposure device or camera (which contains a sealed gamma-ray emitting source within a radiation shield) is placed nearby. A flexible hollow tube called a "guide tube" is connected to the front of the device and the other end of the guide tube to which an exposure head is attached is positioned on the item to be examined opposite the film. Next, on the back of the device, a "control cable" is connected to the radiation source; this connection is made to the source assembly, sometimes called a "pigtail" (a short length of wire with the source fastened on one end and a connector to the cable on the other). Use of the "pigtail" allows the connection to be made without directly exposing the radiographer. Finally, a hollow tube through which the control cable moves is connected to the back of the device. The control cable and its tube are then unreeled until the cranking device for operating the cable is approximately twenty feet from the device. This distance provides radiation protection for the radiographer. The next step is to crank (push) the radioactive source from the radiographic device to the end of the guide tube. The gamma-rays from the source penetrate the item under examination and interact with the film. At the end of the desired exposure time the source is cranked back into the device. A survey is made with a radiation detection device to ensure that the source is in its shielded position, and the film is retrieved for development. The radiographer is then ready to proceed with the next exposure.

Although the described procedure appears straightforward, and most radiography is performed safely, radiation overexposures to radiographers and occasionally to the general public occur. Accidental radiation overexposures to both radiographers and the public have concerned both the NRC and its Agreement States because the radiation levels of the radioactive sources used in industrial radiography are sufficient to cause serious injury or death.

Industrial radiography performed in the field is of most concern. Unlike many other applications of ionizing radiation which are rigidly controlled and remote from the public, industrial radiography involves the use of high activity sources, somtimes in close proximity to the general public, and is often only under control of the radiographer. The work is generally performed under production pressure and is often performed in adverse weather and environmental conditions. As a result, errors in following proper safety procedures may be made by radiographers and these occasionally lead to radiation overexposures. In many cases the required radiation survey is not made and in some instances assistant radiographers have been left to perform the radiography themselves without the direct supervision of the more highly trained and skilled radiographer. Some of the failures of radiography licensees to follow NRC requirements have been documented in a recent NRC information notice.[1]

Radiography Overexposures

The NRC has been concerned about the number of radiation overexposures among radiographers for several years and has completed, has underway, or is considering, actions intended to reduce the frequency of the overexposures. These actions include: (a) Development of a training manual for radiography personnel to help ensure that they understand the need for, and the application of, good radiation protection practices,[2] (b) consideration of several programs to improve training provided to individual radiographers to help ensure that they are adequately trained and are aware of their direct responsibility for safety performance, (c) increasing inspection time spent observing workers performing actual radiography operations, (d) providing additional guidance for reporting events as required by 10 CFR and ensuring that these reports include clear information concerning equipment failures when appropriate, and (e) the establishment of safety requirements for radiographic equipment.

Radiation overexposures are required to be reported to NRC by its licensees. Over the decade ending in 1984 industrial radiography has accounted for more than one-half of the overexposures reported by all NRC licensees greater

[1] NRC information Notice No. 87-45: "Recent Safety Related Violations of NRC Requirements by Industrial Radiography Licensees," September 25, 1987. Single copies of this information notice may be obtained by telephone by interested persons at (301) 492-7492.

[2] NUREG/BR-0024, "Working Safely in Gamma Radiography," S. A. McGuire and C. A. Peabody, 1982. Copies of NUREG/BR-0024 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

than 5 rems to the whole body or 75 rems to the extremities and almost 60% of the overexposures greater than 25 rems to the whole body and 375 rems to the extremities. Over this same period, radiography accounted for almost 25% of all overexposures reported by NRC licensees. (1984 is the most recent year for which complete exposure data has been tabulated for all NRC licensees.)

During the years 1979 through 1983 radiographer overexposures for both NRC and Agreement States combined averaged 18% of all overexposures, although radiographers represent only 4% of all radiation workers. It is believed that many more incidents occur which do not require reporting in which there is a potential for serious overexposure from the high-intensity, relatively high-energy gamma-ray sources used.

The extreme hazard potential involved in radiography overexposures is shown in at least three cases (all incidents in foreign countries), where children and adults have found lost radiography sources and have died from overexposure. In other cases involving radiographers, the overexposures have caused acute effects such as burns and necrosis of body tissues. Some examples of incidents which show the extreme hazard potential are:

(1) *1980, Texas:* The source assembly (pigtail) was not properly connected, and the source remained in the guide tube. A proper radiation survey was not made, and the source was stored in the coiled-up guide tube in a room adjacent to a work area. One radiographer received an overexposure of 75 rems, one other person an overexposure of 198 rems and thirty-one other persons recieved exposures ranging from 0.09 to 4 rems. Had another radiography crew not discovered the next day that the source was missing from the device, many others could have been seriously exposed.

(2) *1985, Wyoming:* The source assembly (pigtail) was not connected properly or became disconnected. The radiography crew failed to make the required radiation survey, and the source was stored in the coiled-up guide tube in the back of a pickup truck for two days. Three radiographers received exposures of 22, 7 and 0.6 rem and six members of the general public and one unbadged employee received doses believed to be less than 0.5 rem each.

(3) *1979, California:* The source assembly (pigtail) became disconnected, was cranked out of the end of the guide tube and fell to the ground. No radiation survey was made. An individual found the source and placed it in his hip pocket and carried it around for about 45 minutes. The individual suffered a severe radiation burn on his right buttock. In 1985 the individual still walked with difficulty and was under periodic medical review. Ten other persons were exposed with two of them developing radiation burns on their fingers.

(4) *1984, Morocco:* A source became disconnected and fell to the ground. A laborer found the source and took it home. Eight members of his family died from overexposure, and several others received significant doses.

(5) *1984, Texas:* An assistant radiographer received an overexposure of 7.5 rems for the quarter. Investigation showed that the radiographer did not always lock the source after each exposure as required, nor did he always make the required radiation survey. Subsequent investigation also revealed that the locking mechanism was defective.

Studies of radiography exposure data have shown that the majority of overexposures to radiographers involve improper retraction of the source, failure of the connecting device to hold the source in the fully shielded position once retracted, and failure of the radiographers to properly perform the radiation surveys required by the regulations.

A major factor in many of the reported overexposures is the failure to follow proper safety procedures. However, NRC data indicate that radiography equipment problems contribute to approximately 40% of all reported overexposure events. The principal causes of reported overexposure in which equipment problems played a contributing role are:

(1) The source moves out of the shielded position after being cranked back into the device and before being locked, or the locking device is defective and fails to retain the source in the proper position.

(2) The source assembly (pigtail) is not properly connected or becomes disconnected so that while it may be cranked out of its shielded position in the device, it cannot be retracted and remains in the guide tube.

(3) The source assembly (pigtail) is not properly connected or becomes disconnected and is cranked out through the end of the guide tube and drops to the ground.

(4) The source becomes stuck in the guide tube due to damage to the guide tube or due to fraying of the control cable.

All of these conditions could be recognized by performing a radiation survey after each radiograph (to verify that the source is in its shielded position within the radiography device). Radiographers are required by the regulations in 10 CFR 34.43(b) to perform such a survey. In many cases, however, the radiation survey instrument is not used, is used incorrectly, or is defective. In the first of the causes listed above, the overexposure generally only involves radiographers. In the other three there is considerable potential for exposure to the public as well as radiography personnel.

Previous Regulatory Initiatives

In an effort to reduce the rate and severity of radiography overexposures attributable to equipment problems, the NRC published an Advance Notice of Proposed Rulemaking (ANPRM) on March 27, 1978 (43 FR 12718) announcing that it was undertaking the development of safety requirements for radiographic exposure devices that are licensed under 10 CFR Part 34. Among the several comments received, was the suggestion that the NRC delay further action on any rulemaking until completion of a related consensus performance standard. A voluntary consensus standard, NBS Handbook 136, American National Standard N432, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography" was issued in January 1981. Although the standard incorporates many of the safety design features proposed in the ANPRM, it is a voluntary consensus standard. There was no regulatory requirement for manufacturers to adopt the recommendations of the standard but recent amendments to 10 CFR Parts 30 and 32 formalized NRC's source and device registration process and will ensure that future radiography devices meet the requirements of the standard.

In March 1980 (partly as a result of a serious radiation accident that occurred in California in 1979, example 3 above), an ad hoc Radiography Steering Committee composed of NRC personnel and State officials representing the Conference of Radiation Control Program Directors, Inc., was formed to draft recommendations for improving radiography safety. Four task forces were subsequently established by the steering committee to address various aspects of the problem. These task force assignments were: Training and Certification, Radiographic Equipment Design Safety, Inspection, and Collection and Analysis of Incident Data.

In 1982, the NRC published a training manual for industrial radiographers,[3] and in 1984 the equipment safety task force presented its recommendations on performance criteria for radiographic exposure devices[4] to the Radiography Steering Committee and urged that the recommendations be added to the rules as soon as possible. These recommendations include many of the performance criteria specified in the consensus standard together with additional criteria.

The voluntary consensus standard ANSI N432, issued in 1981, is currently under review for possible revision. The revision is expected to incorporate many of the performance requirements in the international standard, ISO 3999, "Apparatus for Gamma Radiography Specification." Some of the performance requirements to be incorporated in the revised standard are the same as those recommended by the equipment task force and included in this proposed rule. However, publication of the revision as a final industry standard may take several years. When issued, NRC will consider if additional rulemaking is appropriate or necessary to incorporate the standard.

While voluntary consensus standard American National Standard N432 has been available since 1981, it does not appear that all manufacturers are actually using the consensus standard nor does it appear that its provisions have been uniformly or completely implemented by radiography equipment manufacturers. Also, some of the equipment currently in use may have been manufactured prior to publication of the standard and may not meet its provisions. As a result, it is assumed that the voluntary consensus standard has had little effect on reducing the number or severity of radiography overexposures. Further, some of the equipment improvements recommended by the Radiography Steering Committee are not included in the standard.

It has been stated earlier that NRC studies indicated that some 40% of the incidents involved equipment problems. Therefore it is felt that regulatory action is needed at this time in order to reduce the number of radiography incidents occurring and possibly to prevent additional serious overexposures that are potentially possible given the high radiation output of the sources used in this industry.

The Radiography Steering Committee also suggested that one means of reducing radiographer overexposures caused by the failure to detect the return of the source to its properly shielded position in the radiographic exposure device, would be to require that radiographers wear alarm dosimeters, (not chirpers). Alarm dosimeters are radiation detection devices that provide an audible alarm at a preset or selectable dose or dose rate. These devices may also have a visual display or dose or dose rate or both. Also, both dose rate alarm and a dose alarm may be incorporated within the same unit.

Audible-alarm dosimeters are especially useful when radiographers cannot hold survey meters because they need both hands to perform a job or when they cannot continually look at the survey meter because the operation they are performing requires them to look elsewhere. Alarm dosimeters are not to be substituted for a radiation survey meter but are to be considered a complementary warning device. The use of alarm dosimeters is now a requirement for radiographer trainees in Canada and has proved useful according to Canadian officials.

NRC Regulatory Guide 8.28[5] "Audible-Alarm Dosimeters" discusses a program for the appropriate use of alarm dosimeters. Enquiries have indicated that these dosimeters are used in nuclear power plants on a relatively widespread basis. Few, however, are used in the radiography industry in the United States. Alarm dosimeters are considered reliable and hold up well with proper use. They would provide an audible warning to a radiographer when he or she is approaching an exposed source, so that actions can be taken immediately to minimize unnecessary radiation exposure. The steering committee recommended that the use of alarm dosimeters be incorporated in the proposed rule.

Discussion of the Proposed Amendments

Section 34.20(a)

This paragraph incorporates American National Standard N432 by reference into NRC's regulations and will require that future radiography equipment meet the specifications of this standard. The standard addresses performance requirements for radiography devices, source assemblies, and controls. Examples of the requirements specified in the ANSI standard are:

a. Radiography devices and controls will be classified according to handling and operational characteristics. Crank-out devices will be classified as "Type 1" and pipeliner devices as "Type 2." Remote controls will be designated as "Type R" and local controls as "Type L." Local controls may only be used on Type 2 devices.

b. Exposure devices will be marked with the radiation symbol and will display a radiation warning label.

c. Exposure devices, controls, and source assemblies will be expected to meet certain design and construction criteria. Examples include: resistance to stress of use (e.g., the effects of radiation, temperature, and working conditions); appropriate locking mechanisms; adequate control and guide tube connectors; crank direction markings on the control; and control/lock assemblies that will not allow the source to be exposed unless the control is properly connected and the source assembly-drive cable connection properly made.

d. Prototype exposure devices, controls, and source assemblies will be expected to pass certain tests, such as: shielding efficiency, horizontal and vertical shock, accidental drop, stress, crushing, tensile strength, and endurance.

Present 10 CFR Part 34 requirements which limit exterior radiation levels will be replaced by those specified in the ANSI standard. The existing limit of 50 mR/hr at 6 inches (15 cm) was established when lead was commonly used for shielding and before the use of depleted uranium in radiographic devices. With the use of lead, most of the small devices were close to 4 inches (10 cm) in radius and the maximum surface levels were about 300 mR/hr. With the use of depleted uranium, the distance from source to surface can be on the order of 2 inches (5 cm) and a limit of 50 mR/hr at 6 inches (15 cm) can cause radiation levels of 800 mR/hr at the surface. The ANSI standard would limit exterior radiation levels, on portable devices for example, to 200 mR/hr at the surface or 50 mR/hr at 5 cm but in either case not to exceed 2 mR/hr at 1 meter from the surface. The lower external radiation levels for portable and mobile devices should result in lower exposure rates for users of those devices, particularly to that part

[3] S.A. McGuire and C.A. Peabody, "Working Safely in Gamma Radiography" NUREG/BR-0024, U.S. Nuclear Regulatory Commission, September 1982.

[4] "Radiographic Equipment Safety Performance Criteria," D. Honey (CA), R. Ratliff (TX), R. Wascom (LA), S. Baggett and A. Tse (NRC), April 30, 1984. For a copy of this report see paragraph heading For Further Information Contact:

[5] Regulatory guide 8.28 is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Regulatory Guide may be purchased by calling (202) 275-2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

of the user's body that may be in contact with the surface of the device.

In addition to providing the lower limits, ANSI N432 would provide an alternative to determining radiation levels on the surface of the device. Evaluation of surface radiation levels has frequently caused misunderstandings with respect to acceptable procedures. For almost all kinds of radiation measuring instruments, a determination of surface radiation levels requires a combination of an instrument reading and a calculation. The calculation is needed because the instrument reading reflects the radiation level at some location (often the geometric center) within the radiation sensitive chamber of the instrument, and that radiation level may not be the same as the level at the outer surface of the instrument. Under the alternative to determining radiation levels at the surface of the device, the determination may be made at 5 cm from the surface. By specifying a 5 cm distance, determinations can be made directly with many instruments without resorting to calculations. An acceptable procedure for determining the radiation levels near the radiographic exposure device and the amount of radioactive material that the device can contain is given in ANSI N432. Other procedures also may be used for this determination.

Section 34.20(b)

This paragraph would require that a label be displayed on exposure devices with information identifying the sealed source radionuclide, its activity, and the manufacturer and model number. The paragraph would also require that devices to be used as Type B transport containers meet the applicable requirements of 10 CFR Part 71.

Section 34.20(c)

This paragraph would have "crank-out" type exposure devices and associated equipment meet additional performance criteria not specified in ANSI N432. The major provisions of this paragraph are:

a. Require the use of a source assembly to drive cable coupling which requires motion in at least two directions with a positive force in one direction in order to complete the connection. The coupling would also need to be designed, and the manufacturer would be expected to demonstrate, that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

b. Provide a visible source position indicator on radiography devices. The object of this provision is to assure a means for the radiographer to look at the device and see a clear indication that the source is or is not in a safe, shielded position. The indicator should be designed such that under normal and readily foreseeable abnormal conditions it would not falsely indicate the position of the source. Designs which use source assembly ball stop as the "trigger" which have been prototype tested in accordance with ANSI N432 would be acceptable. The visual indicator is not intended to substitute for use of a properly functioning radiation survey meter. The indicator is simply another means of providing safety information to the radiographer about the position of the source.

c. Radiography devices would have to provide a system to automatically secure the source assembly when it is cranked back into the device and a deliberate operation would have to be performed on the device in order to release the source assembly. This provision should help to eliminate the problem of the source accidentally moving out of the safe storage position after it is returned to the device.

d. The sealed source or source assembly would be labelled: "danger—radioactive." This assembly is commonly called the "pigtail" and usually consists of a sealed radiation source, ball stop and connector attached to a flexible wire cable. The entire assembly is comparable in size to a pencil. Labelling of the source assembly should help minimize overexposures if a member of the public finds a lost source assembly. The label should be designed to withstand the intense radiation and to not weaken the structural integrity of the source assembly or interfere with its use in the device.

e. The guide tubes to be used with exposure devices would be expected to pass the crushing tests for control tubes as specified in ANSI N432. Also the guide tube must pass a kinking resistance test that closely approximates the kinking forces likely to be encountered during use. The proposed revision to ANSI N432 has a kinking test for such guide tubes and the NRC would find this test acceptable for meeting the requirements of this section. The test referred to is described in its entirety as follows:

Place the projection sheath without connection, on a horizontal surface and fix one of the ends so that it does not move in any way during the test. The length of the projection sheath shall be the maximum length authorized by the manufacturer.

Form a flat closed loop, either on the right or left of the positioning axis, with the fixed end under the loop, and keep the ends crossed by means of a hoop so that the loop cannot come undone under the action of a vertical component of elasticity and the free end can still slide without noticeable friction.

Apply a tractive force to the free end, at a tangent to the loop, reducing the diameter of the loop. The force shall be applied by means of a dynamometer in such a way that it reaches 200 N in 5 seconds. The force shall be maintained at this level for 10 seconds.

Repeat the test 10 times, undoing and redoing the loop at the same point for each test.

If the projection sheath is composed of various parts with connections, restart the test including a connection in the loop. Close the loop as above so that the connection and the crossing point are opposite each other.

In addition, the proposed rule would require the use of an exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube and that the guide tube to exposure head connection be able to withstand the tensile test for control units specified in ANSI N432. The object of these provisions is to ensure the use of appropriately manufactured guide tubes in radiography. The use of an exposure head and an improved source to drive cable connector should be help to eliminate the risk of accidental source loss.

f. The proposed rule would require that source changers provide a system for securing the source assembly in the safe storage position when connecting the drive cable to the assembly. The system should help to reduce unnecessary exposure which could result with a changer where the source is not secure.

g. The proposed rule would prohibit modifications that could compromise the safety features of the system.

Section 34.21(a)

This paragraph continues the present requirements of § 34.21 which limit the radiation levels exterior to radiography devices and certain other equipment. These requirements apply to all existing equipment received prior to one year after the final rule date. The allowance for these limits for exposure devices will be superseded by new requirements five years after publication of the final rule as indicated in § 34.21(b).

Section 34.30

This new section to Part 34 would require licensees to report certain problems they experience with radiographic equipment. Presently, personnel overexposures are required to be reported to NRC under 10 CFR 20.405. While this section does require that the cause of the overexposure be described, it does not request specific information concerning equipment malfunctions which may have led to the overexposure. 10 CFR Part 21 provides requirements for reporting defects or noncompliance of a basic component in which a defect or failure could cause a substantial safety hazard. However, this part is most applicable to the nuclear power industry and its suppliers. As a result, NRC receives little information concerning radiography equipment malfunctions. The effectiveness of new regulations should be evaluated on a routine basis. This can be best accomplished by requiring licensees to report equipment failures to NRC.

The proposed rule would require licensees to report any event where the source assembly becomes unintentionally disconnected from the drive cable (i.e., failure of the coupling); the source cannot be retracted and secured; or any component of the device fails to operate as intended. The report would include information describing the problem, its cause, identifying the equipment and its manufacturer, when the problem occurred, and the actions taken to correct the problem. If an overexposure occurred in connection with an equipment problem, the report submitted under § 20.405 must also include the above information.

Section 34.33

This section would be amended to include a requirement for the licensee to provide an alarm dosimeter to each radiographer and assistant. The alarm dosimeter would have a pre-set signal which would sound if the individual enters a 500 mR/hr radiation field. The 500 mR/hr set point should be sufficiently low to provide a reliable alarm before a radiographer could get within about 10 feet of a lower activity unshielded source. With higher activity sources, this set point should avoid spurious alarms due to radiation levels close to the camera with the source in the fully shielded position or during routine operations provided radiography personnel are exercising proper use of distance and shielding to avoid unnecessary exposure. The dosimeters would also need to be checked prior to first use each day to ensure that the alarm sounds and would have to be tested on an annual basis for an acceptable response to radiation.

Numerous alarm dosimeter types are on the market, the majority of which provide a digital display of the integrated dose in addition to alarm features. Licensees may find the use of an integrating dosimeter that also incorporates the required dose-rate alarm desirable, but it is to be understood that use of these dosimeters does not relieve the licensee of other requirements in the regulations such as that contained in § 34.33(d) which requires the processing of TLD's or film badges when pocket dosimeters go off scale.

Implementation

As proposed, the dates on which particular requirements become effective depend on when the licensee receives the radiographic exposure device.

If the licensee now has the device or receives a device prior to one year after the effective date of the final rule no immediate action is required.

If the licensee receives a device later than one year after the effective date of the final rule, the device would have to meet all of the requirements of the rule at the time it is received and continue to meet them.

Five years after the effective date of the final rule all devices would be required to meet all the conditions of the rule or be retired from use. Five years was selected based upon discussions with equipment manufacturers, and upon staff experience that indicates that devices which project the source out of its shielded position have an estimated average lifetime of around 5 years and to minimize the impact on small businesses. However, NRC also recognizes that this average life expectancy is dependent on the device and its amount of use.

Under this proposed schedule equipment manufactures are expected to have a reasonable period to produce exposure devices which satisfy all the new requirements. This schedule would provide users with sufficient time to retire old equipment. The need to implement the new requirement does not appear sufficiently urgent to require earlier dates; however, if a significant decrease in safe performance of devices should occur, an earlier implementation date for particular requirements will be considered.

The NRC requests that persons commenting on the proposed amendments particularly address any anticipated hardships that may result from the proposed implementation schedule. Comments regarding anticipated costs to manufacturers and to users of implementing the proposed amendments will be most useful if they include a breakdown that is keyed to the individual requirements in the proposed amendments.

The proposed amendments would not change the present regulatory requirement that the applicant for a radiography license propose the use of equipment (radiographic exposure device) that is adequate to protect health and minimize danger to health or property. The applicant usually satisfies this requirement with respect to the radiographic exposure device by identifying in the application the manufacturer and model number of the device that will be used. The NRC technical reviewer of the application relates the identified device to safety information that was filed by the radiography equipment manufacturer with the NRC or an Agreement State. If the safety information on file indicates the identified device to be acceptable for licensing purposes, then the regulatory requirement for an adequate radiographic exposure device is satisfied. Recent amendments to 10 CFR Part 30 and 10 CFR Part 32 have formalized the administrative practice under which manufacturers filed safety information concerning their products with the NRC in a process called registration. This formalization of procedures assures that all future models of radiography devices approved for distribution by NRC will at least meet the requirements of NRC regulations and the current requirements of ANSI N432 as described under 10 CFR 32.210.

Summary

The proposed amendments are directed toward improving the safety of radiographic exposure devices and associated equipment and reducing the number of overexposures that occur to both radiographers and the public. The changes proposed are in the form of performance standards because it is recognized by the Commission that the radiography equipment manufacturers should have flexibility in the area of construction and design standards. Also the adoption of voluntary consensus standards in government regulations is recommended in OMB circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards." In addition, since the revised regulations will require radiography devices to meet the performance standards, a new section is to be added to the regulations to require the reporting of failures to meet these standards, particularly those involving source assembly disconnects and failures of the automatic securing device. The regulations will also be amended to require the use of alarm dosimeters by radiographers and radiographer assistants.

This rule would apply to all licensees using radiographic exposure devices under 10 CFR Part 34. The rule would also affect the manufacturers of radiographic exposure devices because licensees could not use, and therefore would not purchase, devices which failed to meet the proposed performance standards. Additional costs would be incurred by licensees in the purchase of alarm dosimeters to be used by their radiographers and radiographer assistants and in annual calibration and maintenance of these dosimeters. Some additional costs will also be incurred for labelling under § 34.20(b)(1) and reporting under § 34.30. It is expected that the final rule would impose performance standards on all radiographic exposure devices manufactured one year after the publication date of the effective rule and would require that all radiographic equipment in use meet the performance standards within five years after publication of the final rule. There are an estimated 3,500 radiographic exposure devices in use, including pipeliner type devices. Devices which project the source out of its shielded position have an estimated life-time of around five years so that many, if not all would have to be replaced within five years even if the regulations under consideration are not issued. NRC anticipates that most of the pipeliner type of devices currently in use will meet the proposed requirements.

Impact

The impact on the radiography industry is expected to be moderate. The regulatory analysis accompanying this rule indicates that some 3,500 radiographic exposure devices are currently in use, distributed among approximately 1,100 licensees or approximately 3 devices per licensee. There are also approximately 5,000 radiographers and radiography assistants employed on a full- or part-time basis and an estimated additional 5,000 radiography supervisors who are actively engaged in the field for a few weeks each year. the costs of implementing the proposed changes in radiography devices have been estimated at approximately $150 per device, and the average cost of providing alarm dosimeters to radiographers is $325 per dosimeter. If the average licensee is assumed to have three radiography devices which have an average lifetime of 5 years and 5 full time radiographers the added cost per licensee amounts to $1,625 for the initial purchase of alarm dosimeters and a $930 annual cost for replacement of devices and dosimeters, maintenance reporting, and labelling. The regulatory flexibility analysis, set out in Appendix A of this document presents a more detailed analysis of the costs involved.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

The proposed rule will involve engineering design modifications and significant creative engineering may be involved but no requirements for significant quantities of materials, water, electricity or other forms of energy have been identified and no environmental or radiation pollution will be involved.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Dr. Donald O. Nellis, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3628.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies may be obtained from Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3628.

The Commission requests public comments on the draft regulatory analysis. Comments may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Analysis

The NRC has prepared a regulatory flexibility analysis on the impact of this rule on small entities as required by Section 604 of the Regulatory Flexibility Act. The analysis which is set out in Appendix A of this document, indicates that the proposed rule could have an economic impact of about $1,625 initially, and $930 annually on each radiography licensee, 90% or more of which are considered to be small entities. These costs are not considered to be overburdensome in light of the possible benefits derived.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size in terms of annual income or revenue and number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the licensee as compared to that on a large licensee; and

(c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

Backfit Analysis

This proposed rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects in 10 CFR Part 34

Byproduct material, Packaging and containers, Penalty, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 34:

PART 3—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for Part 34 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 34.20(a)–(e), 34.21(b), 34.22, 34.23, 34.24, 34.25(a), (b) and (d), 34.28, 34.29, 34.31(a) and (b), 34.32, 34.33(a), (c), (d) and (f), 34.41, 34.42, 34.43(a), (b) and (c) and 34.44 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 34.11(d), 34.25(c) and (d), 34.26, 34.27, 34.28(b), 34.29(c), 34.30, 34.31(c), 34.33(b) and (e) and 34.43(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 34.20 is added under the Equipment Control heading in Subpart B to read as follows:

§ 34.20 Performance requirements for radiography equipment.

Equipment used in industrial radiographic operations must meet the following minimum criteria:

(a) Each radiographic exposure device and all associated equipment must meet the requirements specified in American National Standard N432 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," 1981 (published as NBS Handbook 136). This publication has been approved for incorporation by reference by the Director of the Federal Register. This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, Telephone (212) 642–4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Public Document Room, 1717 H Street NW., Washington, DC 20555. A copy of the document is also on file at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20408. A notice of any change in the material will be published in the **Federal Register**.

(b) In addition to the requirements specified in paragraph (a) of this section, the following requirements apply to radiographic exposure devices and associated equipment.

(1) Each radiographic exposure device must have attached to it by the user, a durable, legible, clearly visible label bearing the—

(i) Chemical symbol and mass number of the radionuclide in the device;

(ii) Activity and the date on which this activity was last measured;

(iii) Model number and serial number of the sealed source, and

(iv) Manufacturer of the sealed source.

(2) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 10 CFR Part 71.

(3) Modification of any exposure devices and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.

(c) In addition to the requirements specified in paragraphs (a) and (b) of this section, the following requirements apply to radiographic exposure devices and associated equipment that allow the source to be moved out of the device for routine operation.

(1) The coupling between the source assembly and the control cable must be such that the application of motion in two planes and a positive force in one of these planes is necessary to complete the connection. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(2) The device must be equipped with a readily visible source position indicator which, under normal and reasonably foreseeable abnormal conditions, will not falsely indicate the position of the source.

(3) The device must automatically secure the source assembly when it is cranked back into the fully shielded position in the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(4) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which will protect the source assembly from water, mud, sand or other foreign matter during storage and transportation;

(5) Each sealed source or source assembly must have attached to it or engraved in it a durable, legible, visible label with the words: "DANGER—RADIOACTIVE." The label must not interfere with the safe operation of the exposure device or associated equipment.

(6) The guide tube must have passed the crushing tests for the control tube as specified in ANSI N432 and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(7) Guide tube conduits must be used when moving the source out of the device.

(8) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations.

(9) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432.

(10) Source changers must provide a system for assuring that the source will not be accidentally withdrawn from the changer when the drive cable is being connected to the replacement source assembly.

(d) All new radiographic exposure devices and associated equipment acquired by licensees after (insert a date one year from publication of the final rule in the Federal Register) must comply with the requirements of this section.

(e) All radiographic exposure devices and associated equipment in use after (insert a date five years from publication of the final rule in the **Federal Register**) must comply with the requirements of this section.

3. In § 34.21 the existing paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 34.21 Limit on levels of radiation for radiographic exposure devices and storage containers.

* * * * *

(b) Paragraph (a) of this section shall apply to all existing equipment received prior to (insert a date one year after the publication date of the final rule). Five years after (insert the date of publication the final rule) § 34.21 shall apply only to storage containers and all other radiographic equipment must meet the requirements of § 34.20

4. Section 34.30 is added to read as follows:

§ 34.30 Reporting requirements.

(a) In addition to the reporting requirements specified under other sections of this chapter, each licensee shall provide a written report to the U.S. Nuclear Regulatory Commission; Division of Industrial and Medical Nuclear Safety; Medical, Academic and Commercial Use Safety Branch; Washington, DC 20555 with a copy to the Director, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

(1) Unintentional disconnection of the source assembly from the control cable.

(2) Inability to retract the source assembly to its fully shielded position and secure it in this position.

(3) Failure of any component to properly perform its intended function.

(b) The licensee shall include the following information in each report submitted under paragraph (c) of this section:

(1) A description of the equipment problem.

(2) Cause of each incident, if known.

(3) Manufacturer and model number of equipment involved in the incident.

(4) Place, time and date of the incident.

(5) Actions taken to establish normal operations.

(6) Corrective actions taken or planned to prevent recurrence.

(c) Reports of overexposure submitted under 10 CFR 20.405 which involve failure of safety components of radiography equipment must include the information specified in paragraph (b) of this section.

(5) In § 34.33 paragraph (a) is revised to read as follows and a new paragraph (f) is added to read as follows:

§ 34.33 Personnel monitoring.

(a) The licensee shall not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each such individual wears a direct reading pocket dosimeter, an alarm dosimeter and either a film badge or a thermoluminescent dosimeter (TLD). Pocket dosimeters must have a range from zero to at least 200 milliroentgens and must be recharged at the start of each shift. Each film badge and TLD must be assigned to and worn by only one individual.

* * * * *

(f) Each alarm dosimeter must—

(1) Be checked to ensure that the alarm functions properly (sounds) prior to use at the start of each shift;

(2) Emit an alarm signal at a preset dose-rate of 500 mR/hr;

(3) Require special means to change the preset alarm function; and

(4) Be tested at periods not to exceed one year for correct response to radiation: Acceptable dosimeters must alarm within plus or minus 20 percent of the true radiation dose-rate.

6. In Appendix A, Item II.C is amended to add an item 3. to read as follows:

Appendix A

II * * *

C * * *

3. Alarm dosimeters

* * * * *

Dated at Washington, DC, this 10th day of March 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A to This Document—Regulatory Flexibility Analysis for Amendments to 10 CFR Part 34 on Safety Requirements for Industrial Radiographic Equipment

The Nuclear Regulatory Commission proposes to amend its regulations that apply to industrial radiography. The proposed amendments would impose additional safety performance standards on radiographic equipment and radiographers would be required to wear alarm dosimeters. In addition, the proposed amendments would require reporting of failures of radiography equipment to meet safety performance standards in the field.

Industrial radiography performed in the field has been of concern to the NRC and its Agreement States for over 20 years, in part because of its high incidence of overexposure (4 to 5 times that of other radiation workers), and in part because of the potential for serious consequences to both the public and radiographers due to the high activity of the radioactive sources used in this industry. Among the actions considered by the NRC to help alleviate the situation are:

(a) A training manual for radiography personnel,

(b) Improved training programs for individual radiographers,

(c) Increasing inspection time observing actual radiographic operations,

(d) Providing additional guidance for reporting events as required by 10 CFR, and

(e) Establishment of safety requirements for radiographic equipment.

The amendments proposed in this rulemaking fall within the last action category above. They are designed to reduce the potential for overexposures by the imposition of safety performance standards on radiographic exposure devices and associated equipment and by providing some redundancy in detecting exposed sources by requiring the use of alarming dosimeters.

A total of approximately 1,100 radiography licenses are currently in effect, approximately one-third have been issued by the NRC and the other two-thirds by the Agreement States.

Based upon a recent survey of some 355 NRC radiography licensees and discussions with Agreement State personnel in California, Louisiana, and Texas, the staff had concluded approximately 90% of all radiography licensees have annual receipts of less than $3.5 million, the criterion for defining "small entites," specified in section 605(b) of the Regulatory Flexibility Act of 1980.

Most of the radiography licensees are in the business of nondestructive testing in which radiography represents only a part of their total income. A few small firms work only in radiography. In spite of the classification as small entities, the NRC survey cited above indicated that 76% of the licensees had annual receipts of over $500K and most of the remainder had annual receipts exceeding $250K.

The estimated costs to individual licensees resulting from the proposed amendments consist of an initial cost of $1,625 for the purchase of alarm dosimeters and an annual cost of $830 for replacement of devices and alarm dosimeters, annual calibration of alarm dosimeters, and annual maintenance costs. In addition, it is estimated that the reporting requirement on defective equipment and the requirement for labeling the devices specified in § 34.20(b)(1) will result in an annual cost to each licensee of about $100.

A breakdown in the annual cost per licensee given above is as follows:

Replacement of exposure devices	$100
Replacement of alarm dosimeters	325
Annual maintenance of dosimeters	180
Calibration of alarm dosimeters	225
Reporting and labeling	98
	928

Although the majority of the licensees fall within the category of "small entities" as defined by the NRC, the Commission feels that the initial and annual costs of the proposed rulemaking which are described above should not have a significant economic impact on most of the licensees. Further, the Commission has concluded that the benefits that would result to radiographers and to the general public as a result of the proposed rule does not duplicate or conflict with other Federal rules.

[FR Doc. 88-5644 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26, 26a, and 602

[LR-128-86]

Generation-Skipping Transfer Tax Regulations Under Chapter 13 of the Internal Revenue Code

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed generation-skipping transfer tax regulations. This action is necessary because of changes in the applicable tax law made by the Tax Reform Act of 1986. The Internal Revenue Service is issuing temporary regulations, in the Rules and Regulations portion of this issue of the **Federal Register**, that provide rules relating to the generation-skipping transfer tax. The text of the temporary regulations also services as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 16, 1988. The regulations are proposed to apply to any generation-skipping transfer after October 22, 1986.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-128-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-556-4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** remove Parts 26 and 26a of Title 26 of the Code of Federal Regulations and replace them with a new Part 26. The regulations provide rules relating to Chapter 13 of the Internal Revenue Code of 1986, as added by section 1431 of the Tax Reform Act of 1986 (Pub. L. 99-51, 100 Stat. 2085). The regulations also provide rules relating to the effective date of this chapter, as added by section 1433 to the Tax Reform Act 1986 (Pub. L. 99-514, 100 Stat. 2085). This document proposes to adopt those temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of these comments to the Service.

Drafting Information

The principal author of these proposed regulations is Maurice B. Foley of the Legislation and Regulations Division of the office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both, on matters of substance and style.

List of Subjects

26 CFR Part 26

Estate taxes, Generation-skipping transfer.

26 CFR Part 26a

Estate taxes, Generation-skipping transfer, Tax Reform Act of 1976.

26 CFR Part 602

Reporting and recordkeeping requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-5502 Filed 3-14-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program; Public Comment Period and Opportunity for Public Hearing on Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Indiana Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Indiana plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to a reorganization in State agency structure, changes in the procedures for reclamation project ranking and selection, coordination of other reclamation work within the State, and public participation. In addition, revisions and updating are presented relative to procurement, accounting policies and the general description of endangered and threatened species.

This notice sets forth the times and locations that the Indiana plan and proposed amendments to that plan will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on April 14, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on April 11, 1988; requests to present oral testimony at the hearing must be received by Mr. Richard

D. Rieke at OSMRE's Indianapolis Field Office on or before 4:00 p.m. on March 30, 1988.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. Copies of the Indiana Plan, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, 575 N. Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 269-2609

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492

Indiana Department of Natural Resources, Division of Reclamation, 309 W. Washington Street, Suite 201, Indianapolis, Indiana 46204, Telephone: (317) 232-1547.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 269-2609.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Secretary of the Interior approved the Indiana plan. Information regarding general background on the Indiana plan, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana plan can be found in the July 26, 1982 **Federal Register** (47 FR 32108). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "ADDRESSES."

The Secretary had adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR Part 884.14 in approving or disapproving an amendment or revision.

II. Discussion of the Proposed Amendment

By letter dated January 22, 1988, Indiana submitted a reclamation plan amendment to OSMRE (Administrative Record No. IND-0547). The proposed amendment consists of revised narratives to replace several sections of the approved Indiana Plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised.

(1) Organization (30 CFR 884.13(d)(1) and (2)): Indiana is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State agency structure.

(2) Project selection (30 CFR 884.13(c)(2)): Indiana has submitted revised project scoring criteria to insure that projects involving threats to the public health and safety are addressed before lower priority problems. Section 403 of the Surface Mining Act, 30 U.S.C. 1233, provides that expenditures from the AML fund on eligible lands and waters reflect certain stated priorities. The first two priorities concern the protection of the public health, safety and general welfare.

(3) The coordination of reclamation work with the Rural Abandoned Mine Program, and OSMRE's reclamation programs (30 CFR 884.13(c)(3)): Indiana has submitted revised procedures reflecting changes in State practices relative to coordination.

(4) Public participation (30 CFR 884.13(c)(7)): The State has revised its public participation procedures to reflect an expanded public participation effort including public awareness programs, public meetings prior to construction grant application submittal, and involvement of local elected officials.

(5) Purchasing and procurement systems (30 CFR 884.13(d)(3)): Indiana has submitted revised information concerning dollar thresholds requiring competitive bidding.

(6) Accounting systems (30 CFR 984.13(d)(4)): Revised information has been submitted which more accurately describes, and clarifies State policies and procedures.

(7) Endangered and threatened plant, fish, and wildlife and their habitat (30 CFR 884.13(f)(3)): The State has submitted a revised description of conditions and State compliance to required considerations.

OSMRE is seeking comments on the adequacy of the Indiana proposed amendments as set forth in 30 CFR 884.15. If approved, the amendments would become part of the Indiana Abandoned Mine Land Reclamation Plan.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSMRE is now seeking comment on whether the amendments proposed by Indiana satisfy the applicable program approval criteria of 30 CFR 884.14. If the amendments are deemed adequate, they will become part of the Indiana plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on March 30, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement of the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 914

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

Date: March 2, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88-5584 Filed 3-14-88; 8:45 a.m.]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Parts 2, 3, and 14

General Counsel Opinions

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) proposes to revise regulations dealing with legal opinions of the VA General Counsel. These amendments would authorize the General Counsel to designate certain legal opinions as precedential for purposes of future adjudications and appellate reviews, applying criteria established by regulation. The amendments would also clarify the conclusive nature of the General Counsel opinions. This regulatory action is intended to clarify the status and effect of General Counsel opinions, thereby assisting VA officials, benefit claimants, and claimants' representatives in utilizing these opinions. The proposed action is also intended to update procedures to reflect current Agency computer capabilities.

DATES: Comments must be received on or before April 14, 1988. Comments will be available for public inspection until April 28, 1988. It is proposed to make these amendments effective 30 days from the date of publication of the final rule in the **Federal Register**.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, Room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew J. Mullen, (202) 233-2440.

SUPPLEMENTARY INFORMATION: Section 4004(c) of Title 38, United States Code, governing decisions of the Board of Veterans Appeals, provides that the Board shall be bound in those decisions by VA regulations, instructions of the Administrator, and precedent opinions of the chief law officer. Implementing regulations at 38 CFR 19.103(a) refer to VA laws and regulations, decisions and instructions of the Administrator, and precedent opinions of the General Counsel. This regulation, as well as the current provisions of 38 CFR 3.101, reflect the system of Administrator's Decisions employed by the VA until 1974. Under that system, legal opinions prepared by the VA General Counsel and published as Administrator's Decisions or approved by the Administrator of Veterans Affairs were considered binding and precedential with regard to the issues addressed. The issuance of Administrator's Decisions and approval of General Counsel's opinions by the Administrator having been discontinued, and the statutory and regulatory references to "precedent opinions" not having been defined, the VA considered it necessary to update Agency procedures to clarify the status of legal opinions rendered by the General Counsel.

Accordingly, the VA proposes to amend 38 CFR 3.101 and 14.507 to provide that written legal opinions of the General Counsel are conclusive as to all Agency officials and employees with respect to the matter at issue and that those opinions designated by the General Counsel as precedent opinions will be followed in future adjudications and appellate reviews. Section 2.6 of Title 38 is amended to include a specific delegation of authority to the General Counsel to designate opinions as precedential. Criteria relating to the nature and effect of legal opinions are added to § 14.507 to guide the General Counsel in identifying those opinions to be designated precedential. Only advice, recommendations and conclusions on legal issues will be binding and precedential. Policy statements contained in written legal opinions of the General Counsel will not be binding on other VA officials and employees and will not be accorded precedential effect. The VA believes these changes will promote consistency in adjudication and appellate reviews and assist Agency officials, claimants, and claimants' representatives by clarifying the status and effect of General Counsel opinions.

Existing 38 CFR 14.507 provides for digesting, indexing, and filing of printed opinions of the General Counsel. However, due to expansion of the VA's computer capability, General Counsel opinions are no longer printed, but are instead entered into the Office of the General Counsel's computer system for future reference. To reflect this change in procedure, the VA proposes to amend § 14.507 to provide that all precedent opinions of the General Counsel will be serialized and entered in the Office of the General Counsel's computer data base. This change not only updates the regulation to reflect current computer capabilities, but assures public availability of precedent opinions.

The Administrator hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments will have only a limited, beneficial effect on claimants and their representatives.

These proposed regulatory amendments have also been reviewed under E.O. 12291 and have been determined to be non-major because they would not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and lcoal government agencies, or geographic regions.

There are no Catalog of Federal Domestic Assistance numbers associated with these proposed regulatory amendments.

List of Subjects

38 CFR Part 2

Authority delegations.

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions, Reporting and Recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: March 1, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Parts 2, 3, and 14 are proposed to be amended as follows:

PART 2—[AMENDED]

1. In 38 CFR Part 2, Delegations of Authority, § 2.6, paragraphs, (e)(9) and (10) are redesignated as paragraphs (e)(10) and (11); and a new paragraph (e)(9) is added to read as follows:

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(e) *General Counsel.*

* * * * *

(9) The General Counsel is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions in Agency adjudications and appellate reviews of claims for benefits under laws administered by the Veterans Administration.

(Authority: 38 U.S.C. 210, 212)

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PART 3—[AMENDED]

2. In 38 CFR Part 3, Adjudication, § 3.101 is revised to read as follows:

§ 3.101 Decisions to conform.

All decisions will conform to the statutes, regulations, Administrator's decisions, and defined policies as enunciated by the Administrator and to the precedent opinions of the General Counsel. Unless designated as precedent opinions under § 14.507(b), legal opinions in individual cases will not be required to be followed as precedents in subsequent cases.

(Authority: 38 U.S.C. 210)

PART 14—[AMENDED]

3. In 38 CFR Part 14, Legal Services, General Counsel, § 14.507 is revised to read as follows:

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel shall be conclusive as to all Agency officials and employees with respect to the matter at issue, unless there is a change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or one acting as the General Counsel or signing for the General Counsel. Advice, recommendations, or conclusions on matters of Government or Agency policy, contained within a written legal opinion, shall not be binding on Agency officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. The written legal opinions rendered in connection with the adjudication or appellate review of a claim for benefits under laws administered by the Veterans Administration, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claims folder.

(b) A written legal opinion of the General Counsel which, in the judgment of the General Counsel or one acting as the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter at issue, may be designated a "precedent opinion" for purposes of § 3.101 of this title and 38 U.S.C. 4004(c). All precedent opinions shall be serialized, entered in the Office of the General Counsel's computer data base, and made available to members of the public in accordance with applicable laws.

(c) For purposes of this section, the term "written legal opinion of the General Counsel" means a typed or printed memorandum or letter signed by the General Counsel or one acting as the General Counsel or signing for the General Counsel, addressed to an official or officials of the Veterans Administration, stating a conclusion on a legal issue pertaining to Veterans Administration activities.

(Authority: 38 U.S.C. 210)

[FR Doc. 88–5558 Filed 3–14–88; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[General Docket No. 85-388; [RM 5167]; FCC 86-499]

Amendment of Sections of Part 22 of the Commission's Rules as They Apply to Applications To Serve Rural Service Areas; Correction

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission is correcting the Ordering Clauses to a proposed rule concerning rural cellular service previously published in the **Federal Register**, 53 FR 5020, February 19, 1988 to delete paragraph 7.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier Bureau; tele: 632–6450.

Federal Communications Commission.

H. Walker Feaster,

Secretary.

[FR Doc. 88–5485 Filed 3–14–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-52, RM-6032]

Radio Broadcasting Services; Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Winstanley Broadcasting, Inc., seeking to substitute Channel 261C2 for Channel 261A at Panama City Beach, Florida, and to modify its construction permit for Channel 261A to specify the Class C2 channel.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard W. Simcox, Jr., Bosari & Paxson, 2100 M Street NW., Suite 610, Washington, DC 20037, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–52, adopted January 26, 1987, and released March 4, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

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

See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88-5625 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-45, RM-6008]

Radio Broadcasting Services; Estherville, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jacobson Broadcasting Company, Inc., licensee of Station KILR-FM, Channel 240A Estherville, Iowa, proposing to modify its license from Class A facilities to Class C2 facilities operating on the same Channel 240.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren Colby, Esq., 10 East Fourth Street, P.O. Box 113, Frederick, Maryland 21701 (Counsel to Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-45, adopted January 14, 1988, and released March 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88-5626 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 18, 228, and 402

Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: Regulations are proposed to implement recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) and Endangered Species Act of 1973 (ESA). These amendments provide a mechanism for allowing certain incidental takings of endangered, threatened and other depleted marine mammals. Previously, the incidental taking of depleted marine mammals was not allowable under the terms of the MMPA. This rule proposes to amend existing procedures governing incidental take authorizations.

DATE: Comments on the proposed rule must be received by May 16, 1988.

ADDRESSES: Comments should be submitted to the Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Washington, DC 20235.

Documents supporting this proposed rule are available for review at the above address and the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Room 1430, Washington, DC 20240.

Comments on the information collection requirements of 50 CFR Part 228 should be submitted to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, NMFS, 202-673-5348, or Robert Peoples, Division of Fish and Wildlife Management Assistance, FWS 202-343-6307.

SUPPLEMENTARY INFORMATION:

Existing Requirements and Processes

FWS and NMFS share responsibilities under the MMPA (16 U.S.C. 1361 *et seq.*) and ESA (16 U.S.C. 1531 *et seq.*). Under the ESA, most marine species are under the jurisdiction of NMFS and all other species are under the jurisdiction of FWS. Under the MMPA, NMFS is responsible for species of the order Cetacea (whales and dolphins) and the suborder Pinnipedia (seals and sea lions) except walrus. FWS is responsible for the dugong, manatees, polar bear, sea and marine otters and walrus. Depending on the animals involved, the term "Service" used in this document may refer to FWS and/or NMFS.

Section 101(a)(5) of the MMPA allows for the incidental taking of marine mammals under certain circumstances; section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and ESA must be met before the incidental take can be allowed.

MMPA—Section 101(a)(5)

Under section 101(a)(5) of the MMPA, the Service can allow the taking of small numbers of marine mammals incidental to a specified activity (other than commercial fishing) within a specified geographical area. For the Service to consider allowing an incidental taking, a written request for specific regulations must be submitted to the Service containing detailed information on the activity in general and impacts of the total potential take. If the Service makes certain findings, specific regulations will be issued that, among other things, establish permissible methods of taking and other means of affecting the least practicable adverse impact on the species. Requestors are advised that the regulatory process takes at least one year.

After regulations are issued, individual Letters of Authorization must be obtained from the Service by those conducting the activity. Only U.S. citizens are eligible to apply for Letters of Authorization.

Procedural regulations implementing this provision of the MMPA are found at 50 CFR 18.27 for FWS and at 50 CFR Part 228 for NMFS.

ESA—Section 7(b)(4)

Under section 7(a)(2) of the ESA, Federal agencies are required to consult with the Service on any action authorized, funded or carried out by such agencies that may affect endangered or threatened species or critical habitat. Although this consultation is primarily between a Federal agency and the Service, applicants for Federal licenses, permits or funding are encouraged to participate. The Federal agency initiates formal consultation by a written request to the Service that includes detailed information concerning the proposed action and its potential effects. Consultation should be concluded within 90 days.

After consultation, the Service issues its biological opinion which includes an assessment of impacts and its conclusion on whether or not the action is likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat. If the proposed action is not likely to result in jeopardy but may result in the taking of endangered or threatened species, the Service must issue an incidental take statement under section 7(b)(4). Compliance with the terms and conditions specified in the incidental take statement exempts the Federal agency and any permit or license applicant involved from the taking prohibitions of the ESA up to the level specified in the incidental take statement.

Joint FWS–NMFS regulations governing the section 7 consultation process are found in 50 CFR Part 402.

Summary of Amendments

Prior to amendment, section 101(a)(5) of the MMPA applied only to non-depleted species. Under section 3(1)(C) of the MMPA, all endangered and threatened marine mammals are by definition depleted. Since the more restrictive provisions of the MMPA prevail, the ESA provisions alone could not be used to authorize the incidental taking of endangered or threatened marine mammals, even if the anticipated take would result in only negligible impacts.

Public Law 99–659, Title IV, section 411 (approved November 14, 1986) amended section 101(a)(5) of the MMPA and made conforming changes to sections 7(b)(4) and 7(o) of the ESA. The primary change was to allow the taking of depleted as well as non-depleted species of marine mammals incidental to certain activities under certain conditions. The amendments also changed the conditions under which incidental taking can be allowed.

Impact on Species or Stock

In order to allow a taking under section 101(a)(5) of the MMPA, the Service must find that the total taking will have a negligible impact on the species or stock. The party seeking authorization has the burden to demonstrate, through the best scientific information available, that only a negligible impact is reasonably likely to occur.

The proposed definition of "negligible impact," which differs from the present definition, would implement the specific legislative intent behind Pub. L. 99–659 and is taken from the Senate Section by Section Analysis (see 132 Cong. Rec. S16304–5, October 15, 1986).

A finding of negligible impact means that the impact resulting from the specified activity cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. This finding is made with reference to the marine mammal species or stock (as defined in section 2(10) of the MMPA) and not with reference to the effects on individual animals. If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determinations will be made based on the best available scientific information.

Finally, if mitigating measures would render the impacts of a specified activity negligible when it would not otherwise satisfy that requirement, the Service may make a negligible impact finding subject to such mitigating measures being successfully implemented.

To properly interpret and implement the Senate Report language on "negligible impact," the Service believes that the analysis of any adverse effects to recruitment or survival must be conducted within the framework of the management goal to the MMPA, i.e., the maintenance or attainment of an optimum sustainable population (OSP) level for each population stock of marine mammals (see sections 2(2) and (6) of the MMPA). Therefore, the Service would generally apply the proposed definition of "negligible impact" in the following manner: if a request for specific regulations under section 101(a)(5) involves potential impacts to a "depleted" population, then a determination of negligible impact can be made only if the permitted activities are not likely to significantly reduce the increase of that population or prevent it from ultimately achieving its OSP; on the other hand, if a "nondepleted" population is involved, then a determination of negligible impact can be made only if the permitted activities are not likely to reduce that population below its OSP.

Impact on Habitat

The amendments deleted the required finding that the specified activity have only a negligible impact upon the marine mammal habitat. Under the previous standard, a minor impact to a small segment of habitat might be found to be more than negligible and the incidental take prohibited even if the overall impact on the species or stock utilizing the habitat was negligible. Nevertheless, impacts to rookeries, mating grounds, feeding areas and areas of similar significance could have adverse effects on the species or stock. Thus, impacts to habitat will be considered in making the finding of negligible impact to the species or stock. Further, even if the impact is determined to be negligible, specific regulations must include measures to ensure the least practicable adverse impact on the habitat.

Impact on Subsistence Uses

The amendments changed the standard used to evaluate the impact on subsistence uses from "negligible impact" to "not having an unmitigable adverse impact." To determine that an unmitigable adverse impact to subsistence uses exists, two elements must be present. First, the impact resulting from the specified activities must be likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to allow subsistence needs to be met.

In addition, the amendments require the specific regulations governing a specified activity to include measures to ensure the least practicable adverse impact on the availability of the species for subsistence uses, even if the activity will not otherwise have an unmitigable adverse impact. These mitigating measures are intended to allow the harvest of enough animals to meet subsistence needs and to minimize impacts on the species or stock and subsistence users. Those conducting the specified activity, the involved Federal agencies, and the affected subsistence users are encouraged to meet and develop mutually agreeable conditions which satisfy the operational, scientific or other needs of the activity and the requirements of the subsistence users.

Coordination Between the ESA and MMPA

Another purpose of the amendments of the MMPA and the ESA was to clarify the relationship between these statutes so that decision processes under each would be coordinated and integrated to the maximum extent practicable. The ESA alone does not provide authority for the incidental taking of endangered or threatened marine mammals, even if the anticipated take would not jeopardize the species or population. To ensure coordination with the MMPA, section 7(b)(4) of the ESA was amended to require that the incidental take of endangered or threatened marine mammals not be authorized until the MMPA section 101(a)(5) process is completed and measures necessary to comply with the MMPA authorization are specified in the ESA incidental take statement. Therefore, in addition to reasonable and prudent measures to minimize the impact of the incidental take, an incidental take statement will include measures which are required to comply with section 101(a)(5) of the MMPA and applicable regulations.

The difficulty of coordinating the ESA consultation and MMPA exemption processes is that section 7(b)(1)(A) of the ESA generally requires that consultation be completed within 90 days while the MMPA regulatory process is much longer. Since Congress intended that the ESA consultation process proceed in a timely manner, the Service will issue the biological opinion and, if appropriate, issue an incidental take statement prior to completion of the MMPA section 101(a)(5) process. However, no incidental take of marine mammals would be allowed under authority of the ESA until the findings and conditions in the incidental take statement were subsequently revised to reflect the outcome of the MMPA section 101(a)(5) process.

To reduce the timing discrepancy between the two processes, the MMPA section 101(a)(5) process should be initiated well in advance of the ESA section 7 process. In this way, the MMPA requirements can be incorporated into the incidental take statement when the biological opinion is issued and subsequent revisions would not be necessary. As an alternative, the Federal agency and the Service may agree to extend the consultation under section 7(b)(1)(A) to accommodate completion of the section 101(a)(5) regulations. The consent of any permit or license applicant is required for an extension of more than 60 days.

Section 7(o) of the ESA

Section 7(o)(2) of the ESA, as amended, specifies that any taking in compliance with the terms and conditions of an incidental take statement is not a prohibited taking under the ESA. No other ESA permit or authorization is required of the Federal agency or applicant in carrying out the action if the incidental take statement applies and if the action complies with the terms and conditions of that statement. The biological opinion plus the incidental take statement operate as an exemption under section 7(o)(2) of the ESA. A new § 402.14(i)(5) is proposed to clarify this provision.

For example, section 10(a) of the ESA allows the Service to issue permits for the taking of endangered species incidental to an otherwise lawful non-Federal action within the United States and its territorial sea, subject to certain conditions. In 1982, Congress added this provision to allow incidental taking associated with private actions that are not subject to the section 7 consultation process. If an endangered or threatened marine mammal may be taken incidentally to a private action, regulations under section 101(a)(5) of the MMPA would be required. Consultation under section 7 of the ESA would be conducted since issuance of the MMPA regulations is a Federal action. The incidental take statement issued with the biological opinion would address taking concerns under the ESA, and a section 10 permit would not be required.

Proposed Regulatory Changes

These regulations propose to amend 50 CFR Parts 18, 228 and 402 to implement the above changes to section 101(a)(5) of the MMPA and sections 7(b)(4) and 7(o) of the ESA. Basic processes for authorizing incidental take under both ESA and MMPA remain the same; the primary changes are (1) allowing the incidental take of depleted marine mammals, and (2) changing the findings that must be made to allow a take.

Classification

The Department of the Interior, as lead agency, has prepared a draft environmental assessment on this proposed rule. A determination will be made at the time of the final rule as to whether or not this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). The proposed regulations are procedural and, by themselves, do not authorize the taking of depleted marine mammals. Issuance of specific regulations under section 101(a)(5) of the MMPA allowing a taking would require compliance with NEPA, including the preparation of a separate environmental assessment or impact statement, if required.

It has been determined that these regulations do not constitute a major rule as defined in Executive Order 12291. The Department of the Interior has certified under the terms of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The proposed amendments or rules governing the take of small numbers of marine mammals incidental to specified activities will have little, if any, economic effect. Direct costs will be those associated with subsequent preparation of applications for "Specific Regulations" and "Letters of Authorization." However, those costs are not likely to approach the $100 million annual threshold for these rules to be considered a major rule in accordance with E.O. 12291. As most of the applicants under the revised rule, as at present, are likely to be oil and gas corporations and their contractors, they would not be considered small entities under the Regulatory Flexibility Act.

The regulations in 50 CFR Parts 18 and 228 contain a collection of information requirement subject to Office Management and Budget (OMB) clearance under the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirement associated with the amendment of Part 18 contained in this proposed rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0070. The information requirement in Part 228 is approved under OMB control number 0648–0151. The amendment of Part 402 does not contain information collection requirements requiring OMB approval under the Paperwork Reduction Act.

The analyses under NEPA, E.O. 12291 and the Regulatory Flexibility Act are available for review (see **ADDRESSES**).

The primary authors of this proposal are Robert Peoples, Nancy Sweeney, and Michael Young, Department of the Interior, and Patricia Montanio and Gene Martin, Department of Commerce.

List of Subjects

50 CFR Part 18

Administrative practice and procedure, Alaska, Exports, Imports, Intergovernmental relations, Marine mammals, Transportation.

50 CFR Part 228

Administrative practice and procedure, Marine mammals, Outer continental shelf oil and gas exploration.

50 CFR Part 402

Endangered and threatened wildlife, Fish, Intergovernmental relations, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend 50 CFR Parts 18, 228 and 402 as shown below.

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 is revised to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 18.27, paragraph (a) is amended by removing the words "Pub. L. 97–58" and "non-depleted"; paragraph (b), including the note following that paragraph, is revised; in paragraph (c), the definition of "negligible impact" is revised, the definition of "specified activity" is amended by removing the word "non-depleted" wherever it occurs, and a new definition for "unmitigable adverse impact" is added in alphabetical order; paragraph (d) is amended by removing the word "non-depleted" wherever it appears; and paragraphs (d)(3), (e)(1), (f)(2), and (f)(5)(ii) are revised, to read as follows:

§ 18.27 Regulations governing small takes of marine mammals incidental to specified activities.

* * * * *

(d) *Scope of regulations.* The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the Director of the Fish and Wildlife Service:

(1) Finds, based on the best scientific evidence available, that the total taking during the specified time period will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses;

(2) Prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(3) Perscribes regulations pertaining to the monitoring and reporting of such taking.

Note: The information collection requirement contained in this § 18.27 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance No. 1018–0070. The information is being collected to describe the activity proposed and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information will be used to evaluate the application and determine whether to issue Specific Regulations and, subsequently, Letters of Authorization. Response is required to obtain a benefit.

(c) * * *

"Negligible impact" is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

* * * * *

"Unmitigable adverse impact" means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to allow subsistence needs to be met.

(d) * * *

(3) The Director shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Director finds that mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Director may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary finding of negligible impact shall be proposed for public comment along with the proposed specific regulations.

(e) * * *

(1) Specific regulations will be established for each allowed activity which set forth (i) permissible methods of taking, (ii) means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, and (iii) requirements for monitoring and reporting.

* * * * *

(f) * * *

(2) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

* * * * *

(5) * * *

(ii) The taking allowed is having, or may have, more than a negligible impact on the species or stock, or where relevant, more than an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

* * * * *

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

3. The authority citation for 50 CFR Part 228 is revised to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§ 228.1 [Amended]

4. Section 228.1 is amended by removing the words "Pub. L. 97–58" and "non-depleted."

5. Section 228.2 is revised to read as follows:

§ 228.2 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking during the specified time period will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses;

(b) Prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes regulations pertaining to the monitoring and reporting of such taking. The specific regulations governing specified activities are contained in subsequent subparts to this Part 228.

6. In § 228.3, the definition of "negiligible impact" is revised; the definition of "specified activity" is amended by removing the word "non-depleted" wherever it occurs; and a new definition for "unmitiagble adverse impact" is added in alphabetical order, to read as follows:

§ 228.3 Definitions.

* * * * *

"*Negligible impact*" is an impact resulting from the specified acivity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

* * * * *

"*Unmitigable adverse impact*" means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to allow subsistence needs to be met.

7. § In § 228.4, paragraph (a) is amended by removing the word "non-depleted" wherever it appears, and paragraph (c) is revised to read as follows:

§ 228.4 Submission of requests.

* * * * *

(c) The Assistant Administrator shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administator finds that mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary finding of negligible impact shall be proposed for public comment along with the proposed specified regulations.

8. In § 228.5, paragraph (a) is revised to read as follows:

§ 228.5 Specific regulations.

(a) Specific regulations will be established for each allowed activity which set forth (1) permissible methods of taking, (2) means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, and (3) requirements for monitoring and reporting.

* * * * *

9. In § 228.6, paragraphs (b) and (e)(2) are revised to read as follows:

§ 228.6 Letters of authorization.

* * * * *

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

* * * * *

(e) * * *

(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock, or, where relevant, more than an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

* * * * *

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

10. The authority citation for Part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

11. In § 402.14, paragraph (i)(1) is revised, the second sentence of paragraph (i)(3) is revised, and a new paragraph (i)(5) is added, to read as follows:

§ 402.14 Formal consultation.

* * * * *

(i) * * *

(1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking;

(iv) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraphs (i)(l)(ii) and (i)(l)(iii) of this section; and

(v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

* * * * *

(3) * * * The reporting requirements will be established in accordance with 50 CFR 13.45 and 18.27 for FWS and 50 CFR 220.45 and 228.5 for NMFS.

* * * * *

(5) Any taking which is subject to a statement as specified in paragraph (i)(l) of this section and which is in compliance with the terms and conditions of that statement is not a prohibited taking under the Act, and no other authorization or permit under the Act is required.

* * * * *

Dated: January 4, 1988.

William P. Horn,

Assistant Secretary, Fish and Wildife and Parks, Department of the interior.

Dated: February 16, 1988.

William E. Evans,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 88-5642 Filed 3-14-88; 8:45 am]

BILLING CODES 3510-22-M, 4310-55-M

Notices

Federal Register

Vol. 53, No. 50

Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1988-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The purpose of this notice is to propose a level of price support for the honey price support program for the 1988-crop and to proposed continuation of the lower loan repayment provisions now in place for the 1987-crop. These proposed determinations are made in accordance with the provisions of section 201(b) of the Agricultural Act of 1949, as amended. Written comments are invited from interested persons.

DATE: Comments must be received on or before March 25, 1988 in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Orval Kerchner, Acting Director, commodity Analysis Division, USDA-ASCS, 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jane K. Phillips, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3754 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-7602. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATION: These proposed determinations have been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1521-1 and have been classified "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which these proposed determinations apply are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since the Commodity Credit Corporation (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 notice.

In order to implement a price support program for the 1988 crop of honey by April 1, 1988, the beginning of the marketing season, it is necessary to limit the public comment period to less than 30 days. Accordingly, comments must be received by March 25, 1988 in order to be assured of consideration.

Domestic production, imports, CCC and commercial stocks, and honey pledged as collateral for CCC price support loans are expected to result in a total supply of honey in the United States for 1988 of 449 million pounds.

Section 201(b) of the Agricultural Act of 1949 (the "1949 Act"), as amended, provides that the price support level shall be 63 cents per pound for the 1987 crop of honey and for the 1988 crop of honey shall be 95 percent of the price support rate for the previous year's crop, but not less than 75 percent of the simple average price received by producers of honey for the preceding 5 crop years, excluding the high and low years. The Omnibus Budget Reconciliation Act of 1987 amended section 201(b) of the Act to require that once the support levels have been determined using the above method, the 1987 and 1988 rates must be reduced by 2 cents and 0.75 cents per pound, respectively.

The price support loan rate for the 1987 crop of honey was 63 cents per pound, which, when reduced by 5 percent, equals 59.85 cents per pound. Seventy-five percent of the simple average price received by producers in the 5 preceding crop years, excluding the highest and lowest years, is 35.1 cents per pound. Therefore, since the established loan rate (59.85 cents per pound) is in excess of the amount, 59.85 cents per pound is reduced by 0.75 cents per pound, resulting in a price support loan rate for 1988 crop honey of 59.1 cents per pound.

In accordance with section 403 of the 1949 Act, it is proposed that the loan rate for the 1988 crop of honey be adjusted to reflect floral source, color, class and grade, and other market differentials which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the 1949 Act the Secretary may permit producers who have obtained price support loans with respect to the 19986-1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

Accordingly, the following determinations are proposed with respect to the 1988 crop:

Proposed Determinations

The 1988 program will be a price support loan program with a loan rate of 59.1 cents per pound as required by statute.

The 1988 crop honey loan rate will be adjusted to reflect floral source, color, class and grade, and other market differentials under which honey is marketed.

Producers with price support loans for the 1988 crop honey will be permitted to repay such loans at the lesser of the loan level for such crop or at a level which the Secretary of Agriculture, or a designee, determines will minimize the number of loan forfeitures, not result in excessive total stocks of honey, reduce the costs incurred by the Federal

Government in storing honey, and maintain the competitiveness of honey in domestic and export markets. At this present time, it is contemplated that a repayment level may be established in a range of 30 to 40 cents a pound. These levels roughly reflect the wide range of potential landed import prices for honey. A repayment level in this range would result in direct competition with imported honey whereby commercial sales of domestically produced honey would increase and total stocks of domestically produced honey would decrease. This increased competition would minimize the number of loan forfeitures and thus reduce the costs incurred by the Federal Government in storing honey. Repayment within this range would not only make domestically produced honey more competitive with foreign honey in domestic markets but would increase its competitiveness in foreign as well.

Consideration will be given to all views and recommendations that are received relating to the above determinations.

All comments will be available for public inspection in room 3741 of USDA's South Building during business hours (8:00 a.m. to 4:30 p.m).

Signed at Washington, DC on March 10, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-5659 Filed 3-14-88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 14-88]

Foreign-Trade Zone 68; El Paso, TX; Request for Manufacturing for SNA Nut Co. for Pecan Shelling

The City of El Paso, Texas, grantee of FTZ 68, has requested manufacturing approval from the Foreign-Trade Zones Board to allow the use of zone procedures within FTZ 68 by SNA Nut Company for the shelling of foreign pecans. The request was filed on March 3, 1988.

Shelled pecans (meats) are subject to a Customs duty rate of 10¢ per pound, though those of Mexican origin are duty-free under the Generalized System of Preferences (GSP). Unshelled pecans are dutiable at 5¢ per pound and are not covered by the GSP. SNA wishes to enter unshelled pecans into the zone for shelling and sale of the meats primarily in the United States, paying duty at the 5¢ rate (privileged-foreign status). The benefit sought is to avoid duties on the weight of the shells, which account for some 50 percent of the incoming items's weight. SNA indicates that, because pecan meats can be imported duty-free (GSP) from Mexico, zone procedures are a factor in retaining this operation in the United States.

Comments on the proposed manufacturing operation are invited in writing from interested parties. They should be addressed to the Board's executive secretary at the address below and postmarked on or before April 25, 1988.

A copy of the application is available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: March 9, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-5633 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-701, C-475-702]

Postponement of Final Antidumping and Countervailing Duty Determinations and Postponement of the Antidumping Public Hearing; Certain Granite Products From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondents in the antidumping investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(d)(2)(A)).

Based on this request, we are postponing our final determinations as to whether sales of certain granite products from Italy have occurred at less than fair value, and whether producers or exporters receive subsidies within the meaning of the countervailing duty law, until not later than June 20, 1988. We are also postponing our public hearing in the antidumping investigation from April 15, 1988, until May 16, 1988.

EFFECTIVE DATE: March 5, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson (AD) (202-377-5288), or Barbara Tillman (CVD) (202-377-2438), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 29, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 6021). This notice stated that if the investigation proceeded normally, we would make our final determination by May 9, 1988.

On March 2, 1988, the respondents requested a postponement of the final determination in the antidumping duty investigation until not later than June 20, 1988, the 112th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act, (19 U.S.C. 1673d(a)(2)(A)). These respondents account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping determination until not later than June 20, 1988. In addition, on January 28, 1988, we granted the request of petitioner, the Ad Hoc Granite Trade Group, to extend the deadline date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination of the same product, pursuant to section 705(a)(1) of the Act, (19 U.S.C. 1671d(a)(1)) (53 FR 2521). Accordingly, we are also postponing the date of the final countervailing duty determination until not later than June 20, 1988.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping investigation at 1:30 p.m. on May 16, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary for Import Administration by May 9, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determinations or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Administration is being advised of these postponements, in accordance with section 705(d) and 735(d) of the Act. This notice is published pursuant to sections 705(d) and 735(d) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 10, 1988.

[FR Doc. 88-5634 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held April 5, 1988, 8:30 a.m., in the Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

Agenda:

1. Comments from the Public.
2. Review of newly published and pending regulations.
3. Presentation by GE-Calmer on Graphic Workstations.
4. Discussion on AMETC Proposal for addressing inter-TAC issues of common interest.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(b)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P.Willis, 202-377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5610 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held April 5, 1988, at 3:00 p.m., in the Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

General Session

1. Comments from public.
2. User Friendly Regulations.
3. GLV Proposals from Industry.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5612 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held April 5, 1988, 11:30 a.m., in the Herbert C. Hoover Building, Room B841, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Software committee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

Agenda:

1. Comments from the Public.
2. Proposal from the public for streamlining software controls.
3. Proposal from the Public on networking and switching.
4. Presentation on ISON.
5. Comments/Presentations on:

Export Systems and Artificial Intelligence.

Networking Software.

CAD/CAM.

DBM5.
Supercomputer Software.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5611 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held April 6, 1988, at 9:00 a.m., in the Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems.

General Session

Agenda

1. Comments from the public.
2. Discussion of LAN proposals.
3. Subcommittee Reports.
4. Forum Report and Summary on Industry Recommendations on Technical Data.
5. Virtual Memory Discussion.
6. Status Report by the Office of Foreign Availability and Recommendations by Industry.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Dated: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5613 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Fiber Optics Subcommittee; Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Fiber Optics Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held April 5, 1988, 2:30 p.m. Herbert C. Hoover Building, Room 5230, 14th Street & Constitution Avenue NW., Wash. DC. The Fiber Optics Subcommittee was formed to study fiber optics communications equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5614 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held April 5, 1988, 9:30 a.m., Room 5230, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advised the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments are solicited from the public on desired changes to the following entries in the Commodity Control List:

(A) EECN 1501A—Navigation, direction finding, radar, and airborne communication equipment.

(B) ECCN 1502A—Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation, or ultrasonic waves.

4. Consideration of election of Chairmen.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: March 9, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–5615 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DT-M

Switching Subcommittee; Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held April 6, 1988, 9:30 a.m. Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology and Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or Portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspections Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–5616 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DT-M

Carnegie-Mellon University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–278R. *Applicant:* Carnegie-Mellon University, Pittsburgh, PA 15213. *Instrument:* Theta/Theta X-Ray Powder Diffractometer, Model D-MAX-11TBX and Accessories. *Manufacturer:* Rigaku Corporation, Japan.

Comments: None received. *Decision:* Denied. An instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This application is a resubmission of Docket Number 86–278, which was denied without prejudice to resubmission (DWOP). In the DWOP the applicant was asked to address deficiencies cited in the original submission and to provide a comparsion with domestic instruments available from Scintag, Inc. In the resubmission the applicant failed to address the deficiencies cited in the DWOP.

The applicant bases the justification for duty-waiver on three points:

(1) That Scintag cannot be considered a domestic manufacturer;

(2) That Scintag failed to respond to repeated requests for quotation; and

(3) That Scintag did not provide a system without a computer.

Discussion

(1) The applicant contends that most of the parts incorporated into Scintag's instruments are of foreign origin and that, therefore, Scintag's instruments cannot be considered domestically manufactured. We disagree. Section 301.2(g) states "A domestic instrument need not be made exclusively of domestic components or accessories." Scintag imports the diffractometer's goniometer but the drive mechanism of the goniometer incorporates U.S. manufactured stepping motors. The generator (x-ray power source) is wholly foreign. The x-ray tube may be either domestic or foreign, depending on the purchaser's preference. Scintag provides the mainframe, electronics and interfaces, and assembles the various parts into a finished system. This combination of domestic composition is more than adequate to effect a substantial transformation of the foreign parts into a domestic article.

(2) The applicant states that "Scintag never responded to the University's repeated requests to provide a quotation." Scintag claims it has no record of the applicant's claimed

requests, however, and the applicant has been unable to provide evidence of any such request.

(3) Scintag informs us that is "fairly common to sell a diffraction system to a customer without a computer."

Referring to Scintag, the National Bureau of Standards has advised that there is a domestic supplier of a scientifically equivalent instrument.

For these reasons, we deny this application.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-5632 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DS-M

East Orange VA Medical Center et al.; Applications for Duty-Free Entry of Scientific Instruments; Correction

In FR Doc. 88-3471 at page 4866 in the **Federal Register** of February 18, 1988, the last docket in column 1, *Docket Number:* 87-072 should read: *Docket Number:* 88-072.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-5635 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Alaska, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-261R. *Applicant:* University of Alaska, Petroleum Development Laboratory, 437 Duckerring Building, Fairbanks, AK 99775-1260. *Instrument:* JEFRI High Pressure Recombination Apparatus and High Temperature High Pressure Miscibility Apparatus. *Manufacturer:* D.B. Robinson & Associates, Canada. Original notice of this resubmitted application was published in the **Federal Register** of August 31, 1987.

Docket Number: 87-263R. *Applicant:* University of Alaska-Fairbanks, AK 99775. *Instrument:* Phase Behavior PVT System. *Manufacturer:* D.B. Robinson & Associates, Canada. Original notice of this resubmitted application was published in the **Federal Register** of August 31, 1987.

Docket Number: 88-075. *Applicant:* Southern Research Institute, 2000 9th Ave., South, P.O. Box 55305, Birmingham, AL 35255-5305. *Instrument:* Electron Microscope, Model H-600-3. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used to conduct varied cell and molecular biology-related programs which will include but are not limited to the following:

(1) Effects of hormones and growth factors on growth and differentiation of human fetal normal colon epithelial cells.

(2) Toxicity of chemical carcinogens and bile acids in human normal colon epithelial cells.

(3) Susceptibility to infection by Sendi virus of different epithelial cell types in hamster tracheal explant cultures.

(4) Characterization of epithelial cell cultures derived from the normal and metaplastic epithelium of hamster trachea.

(5) Toxicity and carcinogenicity studies of benzyl acetate in rats.

(6) Propagation of human airway mucin-secreting cells.

(7) Effects of retinoids on growth and differentiation of human bronchial epithelial cell cultures.

Application Received by Commission of Customs: January 21, 1988.

Docket Number: 88—084. *Applicant:* University of Oklahoma, 660 Parrington Oval, Normal, OK 73019. *Instrument:* Temperature-jump and Stopped-flow Instrument. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* Studies of the rates of reversible chemical reactions in solution. The reactions in question are too fast to be studied by rapid-mixing tehcniques such as stopped-flow. The types of reactions to be studied include proton-transfer, metal ion-ligand complexation and molecule-receptor complexation. Experiments will be conducted to deduce the mechanism or step-by-step reaction sequence for the chemical system of interest. By studying a series of related compounds the effects of various structural modifications on the compounds' reactivity can be ascertained. *Application Received by Commission of Customs:* January 26, 1988.

Docket Number: 88-095. *Applicant:* University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. *Instrument:* Laser System. *Manufacturer:* Lumonics, Canada. *Intended Use:* The instrument will be used for experiments proposed for two classes of molecular systems: (a) Diatomics (particularly Na_2), and small polyatomics such as SO_2, and (b) large polyatomics such as tetracene or azulene. The work on diatomic and small polyatomic molecules will be used to determine specific information about the photoionization process required to check existing theory. Additionally, it provides a direct probe of whether an exchange of angular momentum is associated with the exchange of energy between the molecular vibration and the excited electron. The work on large molecules will yield information about the vibronic coupling in excited states, the assignment of resonances in the ionization continum, and perhaps the electronic state of molecules undergoing radiationless decay. In addition the instrument will be used for educational purposes in the courses Chemistry 299: Research Chemistry Honors Program, Chemistry 350: Introduction to Research and Chemistry 415: Research in Physical Chemistry. *Application Received by Commissioner of Customs:* February 3, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-5631 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of response to a petition for reconsideration of a rule.

SUMMARY: In response to a petition from the Attorney General of North Carolina, the Assistant Administrator for Fisheries, NOAA, has decided not to reopen rulemaking proceedings regarding Sea Turtle Conservation Rules implementated by NOAA on June 29, 1987. The petitioner requested the Department to withdraw and repeal parts of the final regulations pertaining to North Carolina waters not included in the proposed regulations. A request for comments was solicited in the **Federal Register**, October 15, 1987.

ADDRESS: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Patricia A. Carter, Office of Protected Resources and Habitat Programs, NMFS, U.S. Department of Commerce, Washington, DC 20235 (202/673-5351) or

Charles Oravetz, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as endangered or threatened species under the Endangered Species Act of 1973, (ESA). Five of these, the loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys Kempi*), green (*Chenonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*), are found in marine waters from North Carolina through Texas. Based on information provided by observers on shrimp trawlers, NMFS estimates that each year more than 47,000 of these die.

In 1978, NMFS began a research program to develop gear or methods to reduce the mortality of sea turtles in shrimp trawls. The program led to the development of a turtle excluder device (TED) which releases 97 percent of the turtles caught in shrimp trawls with no loss of shrimp. NMFS began a formal program in 1983 to encourage shrimp fishermen to use the TED voluntarily. Despite substantial efforts to transfer the technology to the shrimping industry, the voluntary program was not successful because sufficient numbers of TEDs were not used on a regular basis.

On March 2, 1987, NMFS published proposed regulations that would require shrimp trawlers in the Gulf of Mexico and Atlantic Ocean off the coast of the Southeastern United States to use approved gear in specified locations and at specific times. Most North Carolina waters were not included in theproposed regulations.

Thousands of comments were received on the proposed regulations. Based on those comments, NMFS made a number of changes, including areas affected and an additional protective measure. On June 29, 1987, NMFS published final regulations requiring shrimp trawlers to use certain protective measures in specified waters at specified times. The final regulations contained requirements for protective measures for sea turtles in North Carolina waters which were not included in the proposed regulations.

On August 27, 1987, Mr. Lacy H. Thornburg, Attorney General of North Carolina, petitioned Mr. Clarence Brown, Acting Secretary of the Department of Commerce, to amend the final rules. The petition requested that parts of the regulations dealing with North Carolina waters be withdrawn and repealed. The petition states among other things, that addition of these waters constitutes an abuse of agency discretion and violates the notice and comment procedures of the Administrative Procedures Act.

Based on public comments received on the petition and a review and analysis of the statements made in the petition, NMFS has decided not to reopen the rulemaking proceedings. Two public comments were received and both opposed any modification of the final rule. The following summarizes our response to the State of North Carolina. A complete copy is available from the address above.

We believe the final rules are supported by the record. They are more uniform and more consistent than the proposed rules. They relax the TED requirement (in exchange for a tow-time restriction) for a majority of the Southeast U.S. shrimp fleet and will substantially reduce the incidental catch and mortality of sea turtles from shrimp trawling. Trawlers fishing in inshore waters have the option of using TEDs if they want to tow longer than 90 minutes.

While NMFS believes that the data base on sea turtles in North Carolina waters (and other waters) could be improved, there is evidence that sea turtles occur in North Carolina's waters, that they are captured and killed in shrimp trawls, and that this capture and kill can be reduced by the use of TEDs and reduced tow times. The final rules promulgated for North Carolina are consistent with those of the other states in the South Atlantic area except for the Canaveral area, which has more stringent requirements due to the greater number of turtles in that area.

The States has emphasized that much more shrimping effort occurs in North Carolina inshore waters than in offshore waters and that there are far fewer sea turtle strandings in inshore wates than in offshore waters. We believe that is because the effort of reporting of sea turtle strandings is not consistent; it varies greatly by area and season, with more reports from offshore beaches than from marshes and estuaries. No direct correlation between shrimping effort and dead turtles on beaches can be drawn except that dead turtles wash up on shores adjacent to areas where shrimping occurs.

Our responsibility under the ESA is not merely to avoid the extinction of a listed species, but to use all methods and procedures necessary to bring a listed species to the point where it no longer requires protection and can be delisted. All the available data show that the incidental catch and mortality of sea turtles in shrimp trawls is a major cause hindering the species' recovery. Therefore, a regulation that reduces this source of mortality is consistent with our responsibilities under the ESA.

Dated: March 10, 1988.

William E. Evans,

Assistant Administrator for Fisheries.

[FR Doc. 88-5640 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in the Textile Category System

March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

The Correlation:

Textile and Apparel Categories with Tariff Schedules of the United States Annotated (1988) present the tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreements program. This Correlation should be amended to reflect the changes indicated below:

Add item 300.6024 to Category 300
Add item 356.2510 to Category 220
Add item 363.0200 to Category 899
Add item 381.2835 to Category 634
Add item 384.2738 to Category 832
Change item 374.0505 to 374.0705 in Category 332
Change item 374.0510 to 374.0710 in Category 832
Change item 374.1005 to 374.0715 in Category 332
Change item 374.1010 to 374.0720 in Category 832
Change item 384.9928 to 384.2728 in Category 836
Change item 384.9929 to 384.2729 in Category 835
Change item 384.9930 to 384.2730 in Category 842
Change item 384.9931 to 384.2731 in Category 838
Change item 384.9932 to 384.2732 in Category 844
Change item 384.9933 to 384.2733 in Category 846
Change item 384.9934 to 384.2734 in Category 846
Change item 384.9935 to 384.2735 in Category 845
Change item 384.9936 to 384.2736 in Category 845

Change item 384.9937 to 384.2737 in Category 847
Change item 384.9938 to 384.2738 in Category 832
Change item 384.9939 to 384.2739 in Category 850
Change item 384.9940 to 384.2740 in Category 851
Change item 384.9941 to 384.2741 in Category 859
Change item 384.9988 to 384.2788 in Category 836
Change item 384.9989 to 384.2789 in Category 835
Change item 384.9990 to 384.2790 in Category 851
Change item 384.9991 to 384.2791 in Category 844
Change item 384.9992 to 384.2792 in Category 840
Change item 384.9993 to 384.2793 in Category 850
Change item 384.9994 to 384.2794 in Category 847
Change item 384.9995 to 384.2795 in Category 842
Change item 384.9996 to 384.2796 in Category 859
Change item 310.6055 from Category 600 to 607
Change item 335.6000 from Category 614 to 220
Change item 338.5037 from Category 620 to 629
Change item 338.5047 from Category 618 to 218
Change item 345.1075 from Category 222 to 414
Change item 345.5585 from Category 625 to 222
Change item 355.2510 from Category 220 to 229
Change item 355.2520 from Category 220 to 229
Change item 355.5000 from Category 220 to 229
Change item 363.0103 from Category 300 to 360
Change item 376.0420 from Category 359 to 369
Change item 376.0800 from Category 459 to 469
Change item 381.4110 from Category 338 to 352
Change item 384.0229 from Category 339 to 338
Change item 384.2306 from Category 641 to 640
Change item 384.2313 from Category 641 to 640
Change item 384.3450 from Category 239 to 359
Change item 384.3751 from Category 334 to 333
Change item 389.6260 from Category 627 to 621
Change item 389.6265 from Category 627 to 621
Delete Category 355, item 772.3115
Delete Category 356, item 772.3120
Delete Category 371, item 772.3135
Delete Category 445, item 772.3132
Delete Category 621, item 389.6260
Delete Category 621, item 389.6265
Delete Category 655, item 772.3125
Delete Category 656, item 772.3130
Delete Category 671, item 772.3140

In Category 447, item 381.9952 delete "suits" and change the SYEF from 54 to 18.

In Category 634, item 384.1902, change the SYEF from 36.8 to 41.3.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5609 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Air Force Academy Request for Secondary School Transcript; USAFA Form 148; and OMB Control Number 0701–0066.

Type of Request: Extension.

Annual Burden Hours: 4,000.

Annual Responses: 11,450.

Needs and Uses: The Air Force uses USAFA Form 148 to collect information about the academic background of applicants for admission to the Air Force Academy. Candidates for admission and high school officials provide information about the candidates' grades and academic ranking. The Air Force Academy uses the information collected in selecting appointees to the Academy.

Affected Public: Air Force Academy Applicants and High School Officials.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88–5636 Filed 3-14-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Civil Global Positioning Service (GPS)

AGENCY: Command, Control, Communications and Intelligence (C3I), DoD.

ACTION: Notice of Development of a Civil GPS Service (CGS).

SUMMARY: The Air Force directed a study to define and formulate a Civil GPS Service (CGS). This effort is being guided by a steering committee composed of representatives from several user communities interested in the GPS. The proposed function of the CGS is to serve as a source of information and a point of contact for civil users of GPS. This service will accept information regarding GPS status and capability from the GPS Operational Control Segment (OCS) and other sources and disseminate that information to the civil community as a complement to Notices to Airmen (NOTAMS) and Notices to Mariners. It will also serve as a focal point for comments and questions from the civil community to DOD regarding GPS matters.

From an operational standpoint, the CGS will serve as a bridge between the DOD's Air Force management and civil user community. The CGS will receive data from the OCS via the Operational Capability Reporting and Management System and other sources and provide it to the civil user community via a number of means.

For purposes of this study, the civil user community is separated into five user categories:

(1) Professional,
(2) Scientific,
(3) Commercial,
(4) Industrial, and
(5) Recreational.

The types of information which can be provided by the service can be separated into four categories:

(1) Planning information,
(2) Current navigation status information.

(3) Archival (or historical) information, and

(4) Responses to user questions.

In general, the data in the CGS will be updated daily. An exception will be made in the case of satellite vehicle status information, which will be updated as required in the event of changes.

The means of distribution under study and consideration include:

(1) Recorded message,

(2) Computer bulletin board,

(3) Data on magnetic tape/disk,

(4) Telephone interaction, and

(5) Publications.

Due to the potential volume of users, a computer bulletin board is a strong candidate for a distribution system since it can handle a high volume of users with a minimum of attention from the CGS staff. The bulletin board could support inspection of data, transfer of defined data segments from the bulletin board to the user, and message traffic between the user and the CGS.

The recorded message is an appropriate medium for disseminating current status information to those users who may not have access to a computer. Magnetic tape/disk will be useful for distribution of archival data or other large-volume transfers. Telephone interactions will be necessary to respond to user questions. Publications could be available to document system concepts, long-term status for new users, and other data.

The CGS will also serve as a consolidation point for feedback from the civil user community to Air Force management. Questions are reported problems from the civil users will be collected by the CGS and forwarded to the OCS as necessary. The CGS shall also serve to promote community standards on a variety of GPS topics. A subset of these issues would contain standards on nomenclature, algorithms, descriptive and processing techniques, and data/information exchange protocols and formats.

Due to the large number of organizations processing GPS data and producing products based on GPS data, the CGS system could provide a valuable service to the civil user community by serving as a central focal point and clearinghouse for various data supplied by sources other than the OCS. All data resident on the system will be considered to be available for public distribution. Examples of such data are base station data for relative positioning, GPS time transfer information, and announcements of commercial products.

The U.S. Department of Transportation (DOT) has agreed to take a leading role in the distribution of GPS status information to civil users and is currently planning an administrative and operational structure for the CGS. The CGS will probably have a multi-agency administrative structure. The operational segment of the CGS will be the Civil GPS Information Center (CGIC). Current DOT plans have identified a target date of 1990 for a fully operational CGIC. An annoucement for an interim CGIC will be made by DOT in the **Federal Register**.

Specific procedures for developing the service and the means and methods that will be used to provide Civil GPS Service are currently being developed. Civil user needs are being considered. Civil user inputs will be used to establish the interface between the OCS and the civil community. A preliminary interface control document has been prepared for the potential implementation of the CGS. This interface control document is available for review and comments. A copy may be obtained by writing to:

DOT/RSPA, ATTN DMA 26, 400 7th Street SW., Room 8405, Washington, DC 20590,

or

Commandant, USCG Headquarters, G–NRN–2 2100 2nd Street SW., Washington, DC 20593.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88–5603 Filed 3–14–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 14–15 April 1988 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advise and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with military requirements in the Pacific and strategic defense matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matter listed in 5 U.S.C. Section 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88–5604 Filed 3–14–88; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 25 March 1988 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

March 10, 1988.

[FR Doc. 88–5605 Filed 3–14–88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Request for Former Spouse Payments From Retired Pay; DD Form 2293; and OMB Control Number 0704–0182.

Type of Request: Reinstatement.

Annual Burden Hours: 3,650.

Annual Responses: 3,650.

Needs and Uses: DD Form 2293 is used in accordance with 32 CFR Part 63. The use of this form is optional. However, failure to complete this form and provide all the necessary documentation requested may delay its processing or make it impossible to process it at all, resulting in denial of the request. The public information requirements have not been changed or modified in this reinstatement. DD Form 2293 has been revised to reflect a new

Privacy Act Statement and expiration date.

Affected Public: Former spouses and military retirees.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88-5602 Filed 3-14-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 24-25 March 1988

Times of Meeting: 0800-1700 hours, 24 March 1988; 0830-1500 hours, 25 March 1988

Place: Fort Belvoir, Virginia.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Belvoir Research, Development and Engineering Center Effectiveness will meet for the purpose of gathering data for the conduct of the effectiveness review for that facility. Briefings will be presented by each directorate covering their work program. The panel will meet in executive session to discuss the methodology for conducting the review and to discuss observations as a result of the RD&E Center briefings. In addition, one-on-one interviews will be conducted with a cross section of the RD&E Center staff. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-5731 Filed 3-14-88; 8:45 am]

BILLING CODE 3710-08-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 23, 1988 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location and may include discussion of the Upper Delaware Ice Jam Project.

The subjects of the hearing will be as follows:

Amendment to the Comprehensive Plan Relating to Criteria and Operations Formulae for Emergency Operations During a Lower Basin Drought Warning and Drought.

In February, 1983 the Commission received *Interstate Water Management Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution 78-20.* These recommendations were unanimously agreed to by the Governors of the Commonwealth of Pennsylvania, the States of New York, New Jersey and Delaware, and the Mayor of New York City. Recommendation 4 of these "Good Faith" Recommendations called for the development of a plan for coordinated operation of existing Basin impoundments during drought periods to complement the operating formula for the New York City Delaware Basin reservoirs in order to maintain reliable supplies for essential uses, to conserve water, and to control salinity. Recommendation 4 further specified that the plan should include operating criteria for the Beltzville, Blue Marsh, Walter, Prompton and Nockamixon projects and the hydroelectric power reservoirs in the Basin of the Pennsylvania Power and Light Company and Orange and Rockland Utilities, Inc.

The Commission's Flow Management Technical Advisory Committee has conducted a study and recommended alternative lower Basin drought warning and drought operating plans.

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to the conservation, development and utilization of Basin water resources. Specifically, it is proposed to:

1. Amend the Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* by the addition of a new Section 2.5.6 to read as follows:

2.5.6 *Coordinated Operation of Reservoirs During a Lower Basin Drought Warning and Drought.*

A. Banking and Use of Excess Release Quantity—New York City Reservoirs—Prior to June 15 of each year, the parties to the 1954 Supreme Court Decree, the Delaware River Basin Commission and the Delaware River Master will review existing conditions in the basin and shall determine whether or not to bank the "excess release quantity" provided pursuant to Section III, B.1.C of the Decree, as calculated for the seasonal period beginning June 15 and ending the following March 15, for possible use to help prevent "lower basin drought" or to provide "lower basin drought" assistance. Relevant factors to be considered include precipitation in the basin, climatic predictions, streamflows, ground water levels, soil moisture and other hydrologic data in making the determination with respect to the banking and use of the excess release quantity. The excess release quantity shall be reserved and placed in an "excess release bank" if the parties to the 1954 Decree, DRBC and the River Master determine that drought conditions in the lower basin are expected or threatening. If the excess release quantity is reserved and banked, the excess release provisions set forth in Section III.B.1.d of the Supreme Court Decree shall be deemed suspended for that water year beginning June 1 and ending May 31. The "excess release bank" shall be used, during that water year, to provide "lower basin drought" assistance releases to the Delaware River designed to assist in meeting the Trenton flow objective for lower basin "normal" conditions, or 3,000 cfs. Such "lower basin drought" assistance releases shall be made in quantities and at such times as determined by the Delaware River Basin Commission, and directed by the Delaware River Master. The "lower basin drought" assistance releases shall be made provided that the total combined storage available in the New York City Delaware River Basin reservoirs exceed the drought warning criteria set forth in Figure 1 of Section 2.5.3. The total of supplemental lower basin releases made from the New York City Delaware Basin reservoirs during any water operations year under the provision of this section shall not exceed the total quantity available in the "excess release bank" available during that same period. If, while banking excess releases, augmented conservation releases from the New York City Delaware River Basin reservoirs are made that would have been credited towards the "excess release quantity" in the absence of banking, then that amount of agumented conservation release shall be deducted from the "excess release bank".

B. Operations during Lower Basin "Normal" Conditions—when basinwide conditions are "normal" and lower basin conditions are "normal" (as defined by Beltzville Reservoir storage above Elevation 615 m.s.l. and Blue Marsh Reservoir storage above Elevation 283 m.s.l.), the following provisions shall govern lower basin operations:

1. New Jersey Diversion—Diversions by the State of New Jersey during "normal" periods, shall be computed as provided in Section V.B. of the amended Decree of the U.S. Supreme Court in New Jersey v. New York, 347 U.S. 995 (1954) and its total diversion without compensating releases shall not exceed 100 million gallons per day (mgd) as a monthly average, with the diversion on any day not to exceed 120 million gallons, and its total diversion without compensating releases shall not exceed an average of 100 mgd during any calendar year.

2. Trenton Flow Objective—the minimum streamflow objective at the U.S.G.S gaging station located at Trenton, New Jersey, shall be 3,000 cfs.

3. Priority of Releases—Releases shall be made from storage to maintain the minimum Trenton streamflow objective of 3,000 cfs in such quantities and at such times as determined by the Delaware River Basin Commission, and, in the case of the New York City reservoirs, as directed by the Delaware River Master, in the following order of priority:

(a) Releases from the "excess release bank" in the New York City Delaware Basin reservoirs, if available as provided under Section A of this plan.

(b) Releases from Beltzville Reservoir from storage between elevations 628 and 615 m.s.l. (73.7% of storage remaining), and/or releases from Blue Marsh Reservoir from storage between elevations 290 and 283 m.s.l. (68.9% of storage remaining). Releases may be made from either or both reservoirs considering water quality needs in the Lehigh and Schuylkill Rivers.

C. Operations During Lower Basin "Drought Warning" Conditions.—When the Storage in Beltzville Reservoir falls below elevation 615 m.s.l. (73.7% of storage capacity) and the storage in Blue Marsh Reservoir falls below elevation 283 m.s.l. (68.9% of storage capacity) the Delaware River Basin Commission shall declare a "drought warning" condition in the lower Basin, and the following operating provisions and actions shall automatically be placed in effect:

1. New Jersey Diversion—The total diversion by the State of New Jersey during "lower basin drought warning" conditions in the lower Basin shall be computed as a daily running average, commencing on the day such drought warning becomes effective. The total diversion by New Jersey shall not exceed a running average of 70 mgd with the diversion on any day not to exceed 120 million gallons per day. If the allowable diversion for any condition period following entry into drought warning operations is not fully used, the unused portion may not be credited or used during subsequent periods.

2. Trenton Flow Objective—During "lower basin drought warning" periods, the minimum streamflow objective at the U.S.G.S. gaging station located at Trenton, New Jersey, shall be established as set forth in Table 2 of Section 2.5.3, in accordance with the seven-day average location of the 250-mg/l isochlor (the "salt front" in the Delaware Estuary).

3. Priority of Releases—Releases shall be made from storage to maintain the minimum streamflow objectives set forth in Table 2 of Section 2.5.3, in such quantities and at such times as determined by the Delaware River Basin Commission, and in the case of the New York City Reservoirs, as directed by the Delaware River Master, in the following order of priority:

(a) Releases from the "excess release bank" in the New York City Delaware River Basin Reservoirs, if available, as provided under Section A. Because the "excess release bank" will have been used under lower basin normal conditions, it would only be available in the second or a subsequent year of a "lower basin drought" or "lower basin drought warning."

(b) Releases from Beltzville Reservoir from storage between elevations 615 to 590 m.s.1. (38% of storage remaining), and/or releases from Blue Marsh Reservoir from storage between elevations 283 and 273 m.s.1. (36.8% of storage remaining). Releases may be made from either or both reservoirs, considering water quality needs in the Lehigh and Schuylkill Rivers.

4. Reduction of Conservation Releases—In order to conserve storage, conservation releases from the listed lower basin reservoirs shall be modified as set forth in Table 4 of Section 2.5.5 commencing with the declaration of a "lower basin drought warning" condition.

5. Conservation Measures—The Delaware River Basin Commission and the lower basin states will implement and encourage concerted voluntary water conservation measures and programs during the "lower basin drought warning" condition.

6. Consultation by Decree Parties, the Delaware River Basin Commission, and Delaware River Master—within 30 days following triggering of lower basin drought warning conditions, the Delaware River Basin Commission shall convene the authorized representatives of the States of Delaware, New Jersey and New York, Commonwealth of Pennsylvania, City of New York and the Delaware River Master to review current conditions and to consider and determine actions to be implemented in the event of "lower basin drought" emergency conditions declared pursuant to Article 10.4 of the Compact.

7. Ending "Lower Basin Drought Warning"—When the storage levels in Beltzville and Blue Marsh Reservoirs simultaneously exceed their respective "lower basin drought-warning" storage levels for 30 consecutive days, or when either of those reservoirs spills, the "lower basin drought warning" operation shall automatically terminate and normal operations shall be resumed, unless the Commission unanimously agrees otherwise.

D. Operations During Lower Basin Drought Conditions—when storage in Beltzville Reservoir falls below elevation 590 m.s.1. (38.0% of storage capacity) and storage in Blue Marsh Reservoir falls below elevation 273 m.s.1. (36.8% of capacity) and remains below such levels for three (3) consecutive days, the Delaware River Basin Commission shall, pursuant to Article 10.4 of the Compact, declare a "lower basin drought" emergency condition in the lower basin and the following provisions shall automatically be placed in effect:

1. New Jersey Diversion—the total diversion by New Jersey during lower basin drought conditions shall not exceed a running average of 65 mgd, for the continuous period commencing on the first day following declaration of the

"lower basin drought," with the diversion on any day not to exceed 120 mgd.

2. Trenton Flow Objective—During lower basin drought conditions, the minimum streamflow objective at the U.S.G.S. gaging station located at Trenton, New Jersey shall be established as set forth in Table 2 of Section 2.5.3 in accordance with the seven-day average location of the 250 mgl isochlor (the "salt front") in the Delaware Estuary.

3. Reservoir Operations—

(a) If not previously agreed to, within 3 days following the triggering of "lower basin drought" conditions, the parties to the 1954 Decree in consultation with the Delaware River Basin Commission, shall consider and unanimously select, and DRBC shall implement, one of the six "lower basin drought" reservoir operations plans set forth in Subsection D4, or any other plan designed to meet then existing conditions. The parties may by unanimous agreement modify and adjust any such operations plan or plans as necessary and appropriate to reflect actual conditions and needs.

(b) The lower basin drought reservoir operations plans shall consider and include provision of staged releases, as appropriate, from the following storage:

(1) Beltzville Reservoir storage between elevations 590 and 537 m.s.1. (4.65 billion gallons).

(2) Blue Marsh Reservoir storage between elevations 273 and 261 m.s.1. (1.77 billion gallons).

(3) Lake Nockamixon storage between elevations 395 and 325.5 m.s.1. (12.97 billion gallons).

(4) Up to 30 billion gallons of storage in the New York City Delaware Basin Reservoirs, subject to the conditions set forth in subsection D3(d).

(5) Storage in Lake Wallenpaupack and Mongaup facilities (29.81 and 15.38 billion gallons respectively), subject to the conditions set forth in subsection D3(e).

(6) Storage in the New York City Delaware Basin Reservoirs in excess of 80 billion gallons above "drought warning criteria" as set forth in Figure 1 of Section 2.5.3, without compensation.

(7) Storage in the New York City Delaware Basin Reservoirs in excess of 65 billion gallons above "drought warning criteria" as set forth in Figure 1 of Section 2.5.3, with compensation at the rate of 50% of actual releases made for "lower basin drought" assistance only if storage drops below the level of 65 billion gallons above "drought warning." Credits will be added to the "lower basin drought" assistance releases credit bank as defined in Subsection D3(d)(3)(i) and compensated for as provided in Subsection D3(d)(3)(ii).

(8) Available storage in Lake Hopatcong (1.9 to 4.3 billion gallons) subject to the conditions set forth in subsection D3(f).

(c) The Delaware River Basin Commission, in consultation with the parties to the 1954 Decree, shall consider requesting the temporary storage of water in Francis E. Walter and Prompton Reservoirs for future use.

(d) During a lower basin "drought" condition, an amount not to exceed 30 billion gallons of storage in the New York City Delaware Basin Reservoirs may be considered for inclusion in the "lower basin drought" reservoir operations plan to provide "lower basin drought" assistance releases to the Delaware River (in addition to such releases as may be needed to meet the Montague flow objective), in order to assist in meeting the Trenton flow objectives, subject to the following conditions and limitations:

(1) "Lower basin drought" assistance releases may be made under this provision provided that the total combined storage available in the New York City Delaware Basin Reservoirs exceeds by 30 billion gallons the "drought warning" criteria set forth in Figure 1 of Section 2.5.3

(2) The total quantity of supplemental releases made from the New York City Delaware River Basin reservoirs in any water year shall be credited to the City in a "Lower Basin Drought Assistance Releases Credit Bank."

(3) Except as provided in (iii) and (iv), credits accumulated in the "Lower Basin Drought Assistance Releases Credit Bank" shall be carried forward to the following water years, and compensated for as follows:

(i) Credits shall first be used to reduce the "excess release quantity" for the water year beginning the following June as provided under Section III.B.1.c of the 1954 Decree.

(ii) Any remaining credits shall be compensated by a proportionate reduction in the basic Montague flow objective provided under the 1954 Supreme Court Decree and Section 2.5.3. The amount and timing of such reductions shall be determined by the Delaware River Master, in consultation with the Commission and Parties to the 1954 Decree. To the maximum extent possible and considering the hydrological condition of the New York City Delaware River Basin reservoirs and upper basin streamflows, such credits will be worked off on days when releases are required to meet Montague flow objectives, and Trenton flows exceed the applicable flow objective without augmentation from lower Basin storage as ordered by the Delaware River Basin Commission.

(iii) Should any credits still remain at the end of the following water year, the procedure as outlined in D3(d)(3)(i) and D3(d)(3)(ii) shall be repeated for subsequent years as is necessary to totally deplete the "Lower Basin Drought Assistance Releases Credit Bank" except as provided in (iv).

(iv) In the event that any New York City Delaware Basin Reservoir refills and spills, all credits accumulated in the Lower Basin Drought Assistance Releases Credit Bank shall be cancelled.

(e) Power Reservoir Releases—During lower basin "drought" condition, the Delaware River Basin Commission may direct releases from storage in Lake Wallenpaupack and the Mongaup facilities according to Paragraphs (a) through (d). The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission. In order to conserve the waters of the basin, releases from Wallenpaupack and Mongaup shall be made only when water is needed to meet Trenton flow objectives.

(1) Releases from Lake Wallenpaupack may be directed as needed to meet Trenton flow objectives, provided that elevations do not drop below the elevations listed for the following month according to Table 2 of Section 2.5.5 of the Water Code.

(2) Releases from the Mongaup reservoir system may be directed, as needed to meet Trenton flow objectives, following an operations rule curve based upon maximum available storage of 15.38 billion gallons for the total system and providing for refilling the system during the worst hydrologic year of record, maintaining a minimum release and maintaining minimum operating levels. In the absence of an operations rule curve for the Mongaup system, releases shall be made from Mongaup facilities at a ratio of approximately 1 to 2 to the quantity of releases directed from Lake Wallenpaupack.

(3) If the Montague flow objective exceeds the sum of the New York City Delaware River Basin reservoir conservation releases plus uncontrolled flow at Montague by 350 cfs or more, then 350 cfs from the total Wallenpaupack and Mongaup directed releases shall be credited toward the Montague flow objective, and any additional releases required to meet the Montague flow objective shall be made

from the New York City Delaware River Basin reservoirs.

(4) If the Montague flow objective exceeds the sum of New York City Delaware Basin reservoir conservation releases plus uncontrolled flow at Montague by less than 350 cfs, then an amount from the total Wallenpaupack and Mongaup directed releases, which is equal to the difference between the Montague flow objective and the sum of New York City conservation releases plus uncontrolled flow at Montague, shall be credited toward the Montague flow objective, and no additional releases shall be required from the New York City Delaware Basin reservoirs to meet the Montague flow objective.

(f) In selecting the reservoir operations plan and release schedules to be implemented, the parties will consider the following factors:

(1) Lake Hopatcong is a privately-owned non-utility lake.

(2) The water in any reservoir or lake may not be available if under the provisions of a declaration of a drought emergency either within or outside of the basin by the Governor of New York, New Jersey, or Pennsylvania, such facility has been identified to provide supplies for essential health and safety purposes.

(3) There are flow constraints imposed by the outlet works.

(4) There are release limitations due to potential flooding conditions downstream.

(5) The season and seasonal hydrologic conditions.

(6) The status of storage and probability of refill or drawdown for each reservoir.

(7) The status of demands upon each reservoir.

(8) The impact of drought operations upon the authorized uses of each reservoir.

(9) The condition of other water supplies, storage or sources available to the owners and operators of each reservoir.

(10) The variable impact of observed and expected drought conditions in the drainage areas for each reservoir.

(11) Salinity intrusion in the Delaware Estuary.

(12) Releases shall be made from storage to maintain the minimum Trenton streamflow objectives set forth in Table 2, of Section 2.5.3, in such quantities and at such times as determined by the Delaware River Basin Commission, and, in the case of the New York City reservoirs, as directed by the Delaware River Master, in accordance with the schedules and priorities set forth in the operating plan selected or modified by the parties under this section.

4. Operations Alternatives for "Lower Basin Drought" When Basinwide Conditions are Normal.

(a) The alternatives for "lower basin drought" operations presented herein vary considerably and were specifically designed to be able to address the wide range of conditions which may occur. For example, if a "lower basin drought" triggers and the upper basin reservoirs are nearly full, then upper basin reservoirs may play a more significant role in helping to solve the lower basin crisis. On the other hand, if the lower basin is in a drought condition and the basin as a whole is about to enter a "drought warning" condition, then it would be appropriate to look to other sources such as power dams or recreation reservoirs for assistance. In that case, early mobilization of these additional sources would significantly reduce the severity of basinwide drought conditions should they occur. A schematic guide for selecting alternatives for "lower basin drought" operations is presented in Figure 1.

(b) Factors which would indicate the most favorable condition for each alternative are as follows:

(1) *Alternative 1*—Application of Alternative 1 is indicated if the general hydrologic condition of the upper basin is much better than the lower basin, based on various drought indicators, including precipitation, streamflow, groundwater levels and reservoir storage. Under these conditions storage in the New York City Delaware River Basin reservoirs would be high (i.e., 65 bg above the drought warning line), with a low projected demand on the reservoirs. Storage in the New York City non-Delaware reservoirs would also be high.

Under these conditions, Alternative 1 calls for New York City Delaware storage to be used heavily because there would not be a significant risk of drawdown triggering a basinwide drought condition. This alternative would use water which would otherwise likely spill later during the water year.

(2) *Alternative 2*—Use of Alternative 2 is indicated if the general condition in the upper basin is moderately favorable (i.e., storage at least 30 bg above drought warning and less than 65 bg above drought warning). This plan involves extra releases from the New York City reservoirs to assist lower basin conditions. In the event that the City reservoirs drop to less than 30 bg above drought warning, then releases from the power dams would be used instead. Because such releases would tend to increase the risk of the basin entering drought warning, this option should only be considered if it triggers after September 1, when the risk of drawing the basin into drought warning conditions is reduced. This would limit the amount of time water would be needed as well as increase the probability of refill before serious drawdown occurred.

(3) *Alternative 3*—This alternative uses only lower basin reservoirs (i.e., located below Montague) and does not involve the use of New York City or upper basin power reservoirs. This alternative provides the least amount of storage with which to work. Two conditions combined would indicate that application of Alternative 3 is appropriate—(1) the New York City Delaware River Basin reservoirs are very close to entering a drought warning condition (i.e., storage in New York City Delaware reservoirs is less than 30 bg above the drought warning line when lower basin drought triggers) and the non-Delaware River Basin New York City supplies are low; and (2) the "lower basin drought" occurs very late in the saason (i.e., after November 1). Under these seasonal conditions, the likelihood of the lower basin reservoirs emptying before the natural refill period is low, and the required releases most likely can be made from the limited remaining contents of the lower basin reservoirs.

(4) *Alternative 4*—This alternative calls upon the upper basin power company reservoirs for assistance. This alternative would be indicated when the New York City Delaware River Basin reservoirs are less than 30 bg above the drought warning line and the lower basin triggers before November 1, thereby increasing the probable need for additional water. In this case, the basin would have a high probability of entering a drought warning condition, thus the City storage should be conserved.

(5) *Alternative 5*—This option proposes the early use of upper basin power company reservoirs followed much later by the use of New York City storage. If a "lower basin drought" triggered early in the year (i.e., before September 1) and City storage were only 30 to 65 bg above drought warning then there would be a distinct risk of the basin entering drought warning later and a strong chance that the lower basin reservoirs could be exhausted. This option, using upper basin power company storage to conserve lower basin and New York City storage for later use addresses these possibilities.

(6) *Alternative 6*—This option is similar to Alternative 2 except that New York City releases would be made

concurrently with releases from lower basin storage on a 50–50 basis. The conditions under which it would be most appropriate would be similar to those for Alternative 2.

(7) Alternative Plans—

Operations Alternatives for Lower Basin Drought When Basinwide Conditions are Normal

NJ Diversions—65 MGD.
Lower Basin Condition—Drought.
Trenton Flow Objective—Table 2—Section 2.5.3 flow objectives for salinity control.
Action—
DRBC issues Drought Declaration
Ban on non-essential uses below Montague
Maintain reduced conservation releases
Order of Priority* of Augmented Reservoir Releases to Maintain Trenton Flow Objectives:

Alternative 1

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Make additional releases from NYC Delaware Reservoir storage in excess of 80 bg above Drought Warning without compensation, and in excess of 65 bg above Drought Warning with 50% compensation if storage subsequently drops below 65 bg above Drought Warning, to augment Delaware River flow.
3. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
4. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.
5. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
6. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.
7. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.
8. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.
9. Make releases from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from Mongaup storage****** subject to minimum operating levels.
10. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 2

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make 10 bg of additional releases from NYC Delaware reservoirs to augment Delaware River flow. To the extent NYC Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon at maximum total release rate of 200 cfs, and releases from Lake Hopatcong***** to elev. 919 (1.969) at a maximum release rate of 75 cfs.
5. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow. To the extent New York City Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
6. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.
7. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow. To the extent New York City Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
8. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 3

1. Impound and use temporary storage in F.E. Walter and Prompton if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)** and release from Lake Hopatcong to elev. 919 (1.9 bg) at a maximum release rate of 200 cfs.
3. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261, and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 4

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 9.9 (1.9 bg) at a maximum release rate of 75 cfs.
5. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
6. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 5

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make releases from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
5. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
6. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.

7. Make additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.

8. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 6

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.

2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**. Make additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow, equal to and simultaneous with releases from Nockamixon; to the extent NYC storage is unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.

3. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong to elev. 915.2 at a maximum release rate of 75 cfs. Make additional releases from . NYC Delaware Reservoirs*** to augment Delaware River flow, equal to and simultaneous with releases from Beltzville, Blue Marsh, Nockamixon and Hopatcong; to the extent NYC storage is unavailable. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.

*To be followed after the Excess Release Bank has been exhausted. Order of priority would be reversed for coming out of a drought condition.

**Loss of recreation below this level.

***New York City would be credited this water against the following year's excess release account unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the drought warning curve. The maximum cumulative amount of these releases is 30 bg.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

4. Reduction of Conservation Releases—In order to conserve storage, conservation releases from the listed lower basin reservoirs shall continue to be modified in accordance with Table 4 of Section 2.5.5 for the duration of a "lower basin drought" condition.

5. Conservation Measures—Upon the declaration of a "lower basin drought" emergency, the lower Basin States shall adopt and implement within the basin drainage area below Montague comparable mandatory conservation measures, including restrictions on nonessential water uses, and shall implement other provisions of drought contingency plans designed to achieve a target of 15 percent reduction in depletive water use. The following water uses shall be deemed non-essential:

(a) Serving of water to any patron of a restaurant, club or other eating place unless specifically requested by such patron.

(b) The use of water for ornamental purposes.

(c) The use of water for washing paved surfaces such as streets, sidewalks, outdoor plazas, driveways, garages, parking areas and patios.

(d) The use of water for non-commercial washing or cleaning of vehicles except for the windshields and windows and except for emergency vehicles.

(e) The use of water for watering of established lawns (i.e., those not newly seeded, sodded or fertilized).

(f) The use of water for watering or sprinkling any part of a golf course except for tees, greens, and aprons.

(g) The use of water for watering non-commercial outdoor gardens, landscaped areas, trees, shrubs and other outdoor plants except: water may be applied with a bucket, can or hand-held hose equipped with automatic shut-off valve.

6. Ending Drought—When the storage levels in Beltzville and Blue Marsh Reservoirs simultaneously exceed their respective "lower basin drought" storage levels for 30 consecutive days or either one of those reservoirs spills, the "lower basin drought" operation shall automatically terminate and either "lower basin drought warning" or normal operations shall be resumed in accordance with Section B or C, unless the Decree parties unanimously agree otherwise.

E. Operations During Basinwide Drought Warning or Drought Following Lower Basin Drought Warning or Drought:

1. Selection of Alternate Plans—If, following the triggering of a "lower basin drought" or "lower basin drought warning" under this plan, the combined storage in the New York City Delaware Basin Reservoirs declines to basinwide "drought warning" or "drought" conditions as defined in Section 2.5.3, the parties to the 1954 Decree shall select and agree to, and the Delaware River Basin Commission shall implement, the provisions of either Section E2 or E3 of this Plan. In the absence of unanimous agreement, the operating rules set forth in Section 2.5.3 shall govern. The parties may by unanimous agreement modify and adjust either plan as necessary and appropriate to respond to actual conditions. In selecting between the alternative plans, and any modification thereto, the parties will consider the following factors:

(a) The extent and severity of drought conditions in various parts of the basin.

(b) The season and seasonal variation of hydrologic conditions.

(c) The status of storage in all affected reservoirs, and the probability of refill or drawdown for each reservoir.

(d) The status of demands upon each reservoir.

(e) The lead time needed to effect conservation measures and to reduce demand.

(f) The prior availability of time and notice to provide for adequate warning and preparation for drought response actions.

(g) The need and ability to take expedited steps to conserve storage in the New York City and other Basin reservoirs.

2. Combined Drought Operations Plan 1.

(a) The schedules of phased reductions governing the maximum allowable rates of diversion of waters of the Delaware Basin by New York City, the minimum compensating releases to be made by the City of New York Delaware Basin Reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, New Jersey, shall be as prescribed in Section 2.5.3.

(b) The operation of Lake Wallenpaupack and the Mongaup System Reservoirs shall be governed by the storage and release schedules prescribed in the operating plan for basinwide drought conditions. The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission.

(c) So long as "lower basin drought warning" or "lower basin drought" conditions prevail simultaneously with basinwide drought warning and drought conditions, the maximum allowable rates of diversion of Delaware Basin waters by New Jersey, the streamflow objectives at the U.S.G.S. gaging station located at Trenton, New Jersey, and the operation of storage in Beltzville Reservoir, Blue Marsh Reservoir, Lake Nockamixon, Lake Hopatcong, and any storage made available in the F.E. Walter and Prompton Reservoirs shall be governed by the *stricter* of the provisions of Sections C and D of the Lower Delaware Basin Operating Plan, or the provisions of Section 2.5.3, which permit lesser New Jersey diversions and lower Trenton Flow Objectives.

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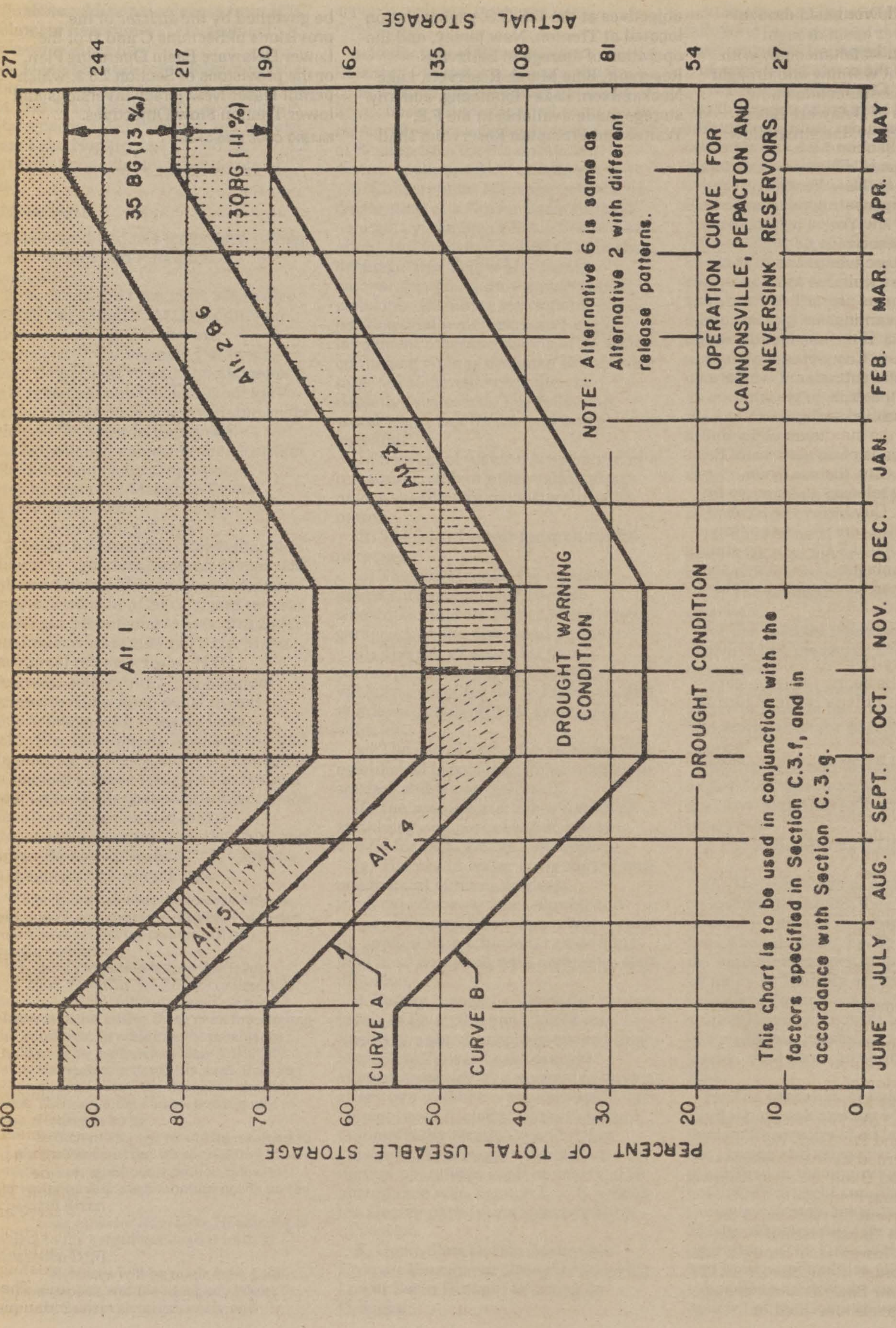

Figure 1

A GUIDE FOR SELECTING ALTERNATIVES FOR LOWER BASIN DROUGHT PLAN OPTIONS

BILLING CODE 6360-01-C

3. Combined Drought Operations Plan 2.

(a) If during the period May 1 to November 30, the combined storage in the New York City Delaware River Basin Reservoirs is in the upper half of the drought warning condition identified in Figure 1 of Section 2.5.3, the maximum allowable rates of diversion of waters of the Delaware by New York City, the minimum compensating releases to be made by the New York City Delaware River Basin Reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, New Jersey, shall be as prescribed for "lower half-drought warning" in Tables 1 and 2 of Section 2.5.3. If the combined storage in the New York City Delaware River Basin reservoirs subsequently enters the lower half of the drought warning condition identified in Figure 1 of Section 2.5.3, the maximum allowable rate of diversions of the Delaware Basin by New York City, the minimum compensating releases to be made by the New York City Delaware River Basin reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, New Jersey, shall be as prescribed for drought in Tables 1 and 2 of Section 2.5.3.

(b) If during the period December 1 to April 30, the combined storage in the New York City-Delaware Basin Reservoirs falls below the "drought warning" levels identified in Figure 1 of Section 2.5.3, the maximum rates of New York City diversions, the minimum compensating releases made by the New York City Delaware River Basin Reservoirs, and the Montague streamflow objectives shall be as prescribed for the applicable drought warning upper and lower half conditions set forth in Tables 1 and 2 of Section 2.5.3. Any subsequent triggering of basinwide drought conditions shall be governed by Figure 1 of Section 2.5.3.

(c) So long as "lower basin drought warning" or "lower basin drought" conditions prevail simultaneous with a basinwide drought warning condition, the maximum rate of diversion by New Jersey, the minimum streamflow objectives at Trenton, and the operation of available storage in Beltzville Reservoir, Blue Marsh Reservoir, Lake Nockamixon, Lake Hopatcong, and the F.E. Walter and Prompton Reservoirs shall be governed by the provisions of Sections C and D of the Lower Delaware Basin Operating Plan.

(d) In the event that following the triggering of a "lower basin drought warning" or "lower basin drought," the combined storage in the New York City Delaware River Basin Reservoirs is in the drought levels identified in paragraphs a. and b., whichever is applicable, the maximum rate of diversions by New York City and New Jersey, the minimum rates of compensating releases, and the minimum streamflow objectives at Montague, New Jersey and Trenton, New Jersey shall be those set forth in Tables 1 and 2 of Section 2.5.3. The operation of all basin reservoirs shall be as prescribed in the plans for basinwide drought reservoir operation.

(e) The operation of Lake Wallenpaupack and the Mongaup System Reservoirs shall be governed by the storage and release schedules prescribed in the operating plan for basinwide drought conditions. The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission.

II. This operating plan will be reviewed by the Commission periodically and will be subject to revision when additional water storage projects become operational.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *National Park Service, Upper Delaware Scenic and Recreational River Final River Management Plan D-78-51 CP (Revised).* An application for revision of the Delaware River Basin Commission's (DRBC) Comprehensive Plan to incorporate features of the Final River Management Plan approved by the Secretary of the Interior on September 29, 1987. The Plan provides the basis for creation of a new intergovernmental cooperative advisory structure to involve the National Park Service, the State of New York, the Commonwealth of Pennsylvania, DRBC, and up to 15 towns and townships in the 5-county Upper Delaware region, to be called the Upper Delaware Council. The Management Plan was developed in accordance with the National Parks and Recreation Act of 1978 (Section 704(c) of Pub. L. 95-625) in cooperation with the conference of Upper Delaware Townships, National Park Service, the states, the counties, the towns and townships in both States, the Citizens Advisory Council and DRBC. The Plan includes: (1) Boundary maps; (2) A program for the management of existing and future land and water uses; (3) An analysis of economic and environmental costs and benefits of Plan implementation; (4) A program providing for coordinated implementation and administration of the Plan to involve appropriate governmental units at federal, state, regional and local levels. The boundary maps indicate the land area influenced by the Scenic and Recreational River designation has been reduced since the 1978 DRBC decision. This hearing continues that of February 24, 1988.

2. *Township of Horsham Sewer Authority D-88-2 CP.* An application for addition of an existing sewage treatment plant to the Comprehensive Plan and for approval to continue the operation of the treatment plant, located in Montgomery County, Pennsylvania, previously owned and operated by the Wichard Sewer Company. No expansion or changes to the project are requested in this application. This hearing continues that of February 24, 1988.

3. *U. S. Department of Justice—Otisville Federal Correctional Institution D-83-7 CP RENEWAL.* An application for renewal of a ground water withdrawal project to supply up to 9.3 million gallons (mg)/30 days of water to the applicant's correctional facility from Well Nos. PW1, PW2 and ES1. Commission approval on May 25, 1983 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 9.3 mg/30 days. The project is located in the Town of Deerpark, Orange County, New York.

4. *Warminster Municipal Authority D-87-19 CP.* A ground water withdrawal project to augment the applicant's municipal water supply system in Warminster Township, Bucks County, Pennsylvania. Well No. 39 is located 1,500 feet northwest of the intersection of Street Road (Route 132) and Norristown Road. The applicant proposes to withdraw up to 6.06 mg/30 days from Well No. 39. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Borough of Northampton D-87-46 CP.* An application to expand a 0.7 million gallons per day (mgd) wastewater treatment plant to provide high quality secondary treatment of a design average flow of 1.5 mgd. the plant is located on the east bank of Hokendauqua Creek near Washington Avenue in Northampton Borough, Northampton County, Pennsylvania. In addition to Northampton Borough, a portion of Allen Township will be served by the proposed expansion. The proposed plant is designed to serve an equivalent population of 15,000 persons through the year 2010. A new outfall will be constructed parallel to the existing deteriorated and undersized line. The outfall will discharge to Hokendauqua

Creek near its confluent with the Lehigh River.

6. *Metropolitan Edison Company D–87–51.* An overhead cable crossing modification to provide an additional neutral wire in order to develop a grounded wye electrical system that will increase voltage from 4.8 to 13.2 KV. The existing facilities must be raised to provide adequate clearance. The 338-foot transmission line crosses the Schuylkill River between Hamburg Borough and Tilden Township, both in Berks County, Pennsylvania. This section is designated for modified recreation under the Pennsylvania Scenic River Act.

7. *H.W. Longacre, Inc. D–87–85.* An application for the upgrading and expansion of the H.W. Longacre, Inc. wastewater treatment plant located in Franconia Township, Montgomery County, Pennsylvania. The existing plant is designed to pretreat up to 0.24 mgd of meat processing wastewater prior to discharging into the Telford Borough Authority Sewage Treatment Plant. The proposed upgrade and expansion is designed to provide tertiary treatment of up to 0.3 mgd. Treatment plant effluent will discharge to an unnamed tributary of Indian Creek.

8. *Delmarva Power & Light Company D–88–10.* An application to construct new earth, rock and concrete capped fenders to protect existing electric transmission towers from being damaged by stray ships. One tower (No. 97) was recently replaced following destruction by a stray ship last year. The project includes a concrete capped mound and five pile clusters around the channel side of Tower No. 97 and two mounds (one upstream, one downstream) around Tower No. 98. The 500 KV line connects the Salem/Hope Creek complex with the Delmarva system in Delaware. The towers are located in New Castle County.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

March 8, 1988.

[FR Doc. 88–5574 Filed 3–14–88; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA88–2–31–000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

March 9, 1988.

Take notice that on March 2, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to be effective April 1, 1988:

Rate Schedule No. X–26, Original Volume No. 3
1st Revised 45th Revised Sheet No. 185
Rate Schedule No. G–2, First Revised Volume No. 1
1st Revised 46th Revised Sheet No. 4.

AER states that the proposed changes would increase AER's system cost by $952,152 and its revenue from jurisdictional sales and service by $28,926 for the six-month PGA period ending September 30, 1988 as adjusted.

AER states that in addition to the above tariff sheets AER submitted for filing the following tariff sheets that cancel its Incremental Pricing clause and deletes all references to same in its PGA and Flexible PGA provisions.

Rate Schedule No. X-26, Original Volume No. 3	Rate Schedule G-2, First Revised Volume No. 1
Cancellation of Incremental Pricing Clause	
16th Revised Sheet No. 185A.	16th Revised Sheet No. 4A
4th Revised Sheet No. 188B.	5th Revised Sheet No. 12B
5th Revised Sheet No. 188C.	4th Revised Sheet No. 12I
1st Revised Sheet No. 188C.1.	1st Revised Sheet No. 12.1
1st Revised Sheet No. 188H.	2nd Revised Sheet No. 12J
Regular PGA and Flexible PGA Provisions	
5th Revised Sheet No. 187.	5th Revised Sheet No. 12A
4th Revised Sheet No. 187A.	7th Revised Sheet No. 12B
4th Revised Sheet No. 187B.	8th Revised Sheet No. 12C
6th Revised Sheet No. 187C.	9th Revised Sheet No. 12D
3rd Revised Sheet No. 187D.	5th Revised Sheet No. 12E
5th Revised Sheet No. 188.	4th Revised Sheet No. 12F
4th Revised Sheet No. 188A.	5th Revised Sheet No. 12G

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 sections 214 and 211 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 March 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5637 Filed 3–14–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–72–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 9, 1988.

Take notice that on March 2, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets.

Original Volume No. 1–A

Third Revised Sheet No. 202

Original Volume No. 2

First Amended Fourth Revised Sheet No. 2.3
First Amended Thirteenth Revised Sheet No. 2–B

Northwest states the purpose of the filing is to reflect a new Fuel Reimbursement Percentage to be effective April 1, 1988, pursuant to the provisions contained in Northwest's FERC Gas Tariff, Volumes 1, 1–A, and 2. Northwest will file a Revised Sheet No. 10–A of its FERC Gas Tariff, First Revised Volume No. 1, as explained in the filing.

Northwest requests an effective date of April 1, 1988 for each of the respective tariff sheets, which date is 30 days from the date of filing.

A copy of this filing has been served on Pacific Interstate Transmission Company, Northwest's jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5638 Filed 3-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2901-002 et al.]

Hydroelectric Applications (Nekoosa Packaging Big Island Mill Corp. et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. *Type of Application:* Transfer.

b. *Project No.:* 2901-002.

Date filed: December 14, 1987.

d. *Applicant:* Nekoosa Packaging Big Island Mill Corporation and Nekoosa Packaging Corporation.

e. *Name of Project:* Holcomb Rock Project.

f. *Location:* On the James River in Amherst and Bedford Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Keith R. McCrea & Michael T. Mishkin, Squire, Sanders & Demsey, 1201 Pennsylvania Avenue NW., P.O. Box 407, Washington, DC 20044, (202) 626-6779.

i. *FERC Contact:* Nanzo T. Coley—(202) 376-9416.

j. *Comment Date:* April 8, 1988.

k. *Application to Transfer License:* OI Big Island Mill STS Inc. (licensee), which recently changed its name to Nekoosa Packaging Big Island Mill Corporation, and Nekoosa Packaging Corporation (NPC) have requested that the project license be transferred from the licensee to NPC.

The license was issued on January 29, 1981, and would expire on February 1, 2001.

l. *This notice also consists of the following standard paragraphs:* B and C.

2. a. *Type of Application:* Transfer.

b. *Project No.:* 2901-002.

c. *Date filed:* December 14, 1987.

d. *Applicant:* Nekoosa Packaging Big Island Mill Corporation and Nekoosa Packaging Corporation.

e. *Name of Project:* Big Island Dam Project.

f. *Location:* On the James River in Amherst and Bedford Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Keith R. McCrea & Michael T. Mishkin, Squire, Sanders & Demsey, 1201 Pennsylvania Avenue NW., P.O. Box 407, Washington, DC 20044, (202) 626-6779.

i. *FERC Contact:* Nanzo T. Coley—(202) 376-9416.

j. *Comment Date:* April 8, 1988.

k. *Application to Transfer License:* OI Big Island Mill STS Inc. (licensee), which recently changed its name to Nekoosa Packaging Big Island Mill Corporation, and Nekoosa Packaging Corporation (NPC) have requested that the project license be transferred from the licensee to NPC.

The license was issued on December 8, 1980, and would expire on January 2, 2001.

l. *This notice also consists of the following standard paragraphs:* B and C.

3a. *Type of Application:* Transfer of License.

b. *Project No.:* 3819-006.

c. *Date Filed:* January 22, 1988.

d. *Applicant:* STS Energenics, LTD., Inc. and STS Hydropower, LTD.

e. *Name of Project:* Mt. Elbert.

f. *Location:* On Mt. Elbert Conduit in Lake County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Stephen O. Schultz, Foster, Swift, Collins & Coey, 313 South Washington Square, Lansing, Michigan 48933-2193, (517) 372-8050.

i. *FERC Contact:* Hector M. Perez, (202) 376-1669.

j. *Comment Date:* April 11, 1988.

k. *Description of the Proposed Transfer of License:* STS Energenics, LTD., Inc. proposes to transfer the license to STS Hydropower, LTD. as part of the transfer of all hydropower assets presently held by the STS family of companies to STS Hydropower, LTD. The project is constructed and in operation. The transferee is a private corporation organized under the laws of the State of Michigan. The transferee states that it will comply with all the applicable laws of the State of Colorado as required by section 9(b) of the Federal Power Act.

l. *This notice also consists of the following standard paragraphs:* B and C.

4a. *Type of Application:* Transfer of License.

b. *Project No:* 8047-006.

c. *Date Filed:* February 5, 1988.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Willimantic No. 2.

f. *Location:* On the Willimantic River, Windham Co., Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S C. 791(a)-825(r).

h. *Applicant Contact:* Duncan Broatch, Summit Hydropower, P.O. Box 122, Putman, CT 06260, (203) 928-2002.

i. *FERC Contact:* William Guey-Lee, (202) 376-9827.

j. *Comment Date:* March 30, 1988.

k. *Description of the Proposed Transfer of License:* Summit Hydropower proposes to sell the Willimantic No. 2 Project No. 8047 to Willimantic Power Corporation (WPC). WPC agrees to accept all of the terms and conditions of the license and agrees to be bound by the license as though it were the original licensee.

l. *This notice also consists of the following standard paragraphs:* B, C, D2.

5a. *Type of Application:* Transfer of License.

b. *Project No:* 8051-004.

c. *Date Filed:* February 5, 1988.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Willimantic No. 1.

f. *Location:* On the Willimantic River, Windam Co., Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Duncan Broatch, Summit Hydropower, P.O. Box 122, Putman, CT 06260, (203) 928-2002.

i. *FERC Contact:* William Guey-Lee, (202) 376-9827.

j. *Comment Date:* March 30, 1988.

k. *Description of Transfer:* Summit Hydropower proposes to sell the Willimantic No. 1 Project No. 8051 to Willimantic Power Corporation (WPC). WPC agrees to accept all of the terms and conditions of the license and agrees to be bound by the license as though it were the original licensee.

l. *This notice also consists of the following standard paragraphs:* B, C, D2.

6a. *Type of Application:* Major License (5 MW or Less).

b. *Project No.:* 9419-001.

c. *Date Filed:* March 5, 1987, and supplemented September 18, 1987.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* Riverton Hydro Project.

f. *Location:* On Spring River and Shoal Creek near Lowell, Cherokee County, Kansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Doyle W. Jones, 902 Highway 270 North, Suite 102, Malvern, AR 72104 (501) 337-4904.

i. *FERC Contact:* Ed Lee on (202) 376-9828.

j. *Comment Date:* May 4, 1988.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) The existing 500-foot-long, 26-foot-high Lowell Dam; (2) an existing

580-acre reservoir, Empire Lake, having a gross storage capacity of 4,340 acre-feet at normal surface elevation of 807 feet NGVD; (3) a reinforced concrete powerhouse integral with the dam and housing eight 450-kW generating units for a total installed capacity of 3,600-kW; (4) a 150-foot-long, 600-volt transmission line; and (5) appurtanant facilities. The project site is owned by the Empire District Electric Company. The estimated project annual energy generation would be 13,890 MWh.

l. *Purpose of Project:* The project energy will be sold to Empire District Electric Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10533–000.

c. *Date Filed:* January 25, 1988.

d. *Applicant:* Franklin Hydro Company, Inc.

e. *Name of Project:* Franklin Development Project.

f. *Location:* On the Winnipesaukee River, in Merrimack and Belknap Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Wayne E. Nelson, CHI Operations, Inc., P.O. Box 1267, Sanford, MA 04073 (207) 490–1980.

i. *FERC Contact:* Thomas O. Murphy (202) 376–9829.

j. *Comment Date:* May 5, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A proposed concrete gravity dam, 150 feet long, 22 feet high and having a crest elevation of 400 feet mean sea level; (2) a proposed reservoir of 9 acres surface area and no appreciable storage capacity at a normal maximum surface elevation of 400 feet mean sea level; (3) a proposed 12-foot-diameter, 3,750-foot-long penstock; (4) a proposed 32-foot-long, 50-foot-wide concrete powerhouse to house a proposed 5.5 MW capacity turbine/generator operating at a gross head of 84 feet; (5) a proposed 360 kW capacity turbine/generator to be located at the dam and operating at a gross head of 22 feet; (6) a proposed 250-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

The estimated annual energy production is 21,000,000 kWh. The applicant proposes to sell the power produced to Public Service of New Hampshire.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, B, C & D2.

8a. *Type of Application:* Petition for Declaratory Order.

b. *Project No.:* EL84–1.

c. *Date Filed:* March 1, 1984.

d. *Applicant:* City of Lanesboro.

e. *Name of Project:* Lanesboro.

f. *Location:* On the South Branch of the Root River, Fillmore County, Minnesota.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Contact Person:* Lynn Iverson, Mayor, City of Lanesboro, Box 333, 202 Parkway South, Lanesboro, MN 55949 (507) 467–3722.

i. *FERC Contact:* Charles T. Brown (202) 376–9129.

j. *Comment Date:* April 25, 1988.

k. *Description of Project:* The project consists of: (1) A 193-foot-long, curved, stone masonry overflow spillway dam; (2) a 1,000-foot-long power canal with an intake structure; (3) a powerhouse containing two hydro units; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* All project power is sold to Dairyland Power Company.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

9a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 9160–001.

c. *Date Filed:* May 2, 1985, and revised February 16, 1988.

d. *Applicant:* Glenwood Springs Power Company.

e. *Name of Project:* Twin Tunnels.

f. *Location:* City of Glenwood Springs, in Garfield County, Colorado.

g. *Filed Pursuant to:* Energy Security Act of 1980, Section 408, 16 U.S.C., 2705 and 2008.

h. *Applicant Contact:* Mr. Scott M. Balcomb, Delaney & Balcomb, PC, P.O. Drawer 790, Glenwood Springs, CO 81602 (303) 945–6546.

i. *FERC Contact:* Mr. Hector M. Perez, (202) 376–1669.

j. *Comment Date:* April 28, 1988.

k. *Description of Project:* The applicant filed a minor license application for this project on May 2, 1985. The application was accepted for filing and a notice of application issued with a last date for comments, motions to intervene, protests, and competing applications of October 11, 1985. On February 16, 1988, the applicant filed a request that its pending license application be treated as a conduit exemption application. The proposed project would utilize the existing City of Glenwood Springs' water supply system and would consist of: (1) A 1,500-foot-long penstock, 18 to 24 inches in diameter collecting the overflow water from an existing storage tank, leading to: (2) a 37-foot by 31-foot powerhouse containing a single turbine-generator unit with a rated capacity of 650 kW and producing an estimated average annual generation of 2.456 GWh; (3) a short tailrace discharging into the Colorado River; and (4) other appurtenances. Applicant intends to sell the project power to either Public Service Company of Colorado or the City of Glenwood Springs.

l. *This notice also consists of the following standard paragraphs:* B, C, and D3b.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 9221–000.

c. *Date Filed:* May 21, 1985.

d. *Applicant:* Dallas Associates.

e. *Name of Project:* Ridgeway Hydro Project.

f. *Location:* On Uncompahgre River in Ouray County, Colorado: Section 6, T46N, R8W: NMB&M.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael J. Graham, P.O. Box N, Manti, UT 84642.

i. *FERC Contact:* Jesse W. Short, (202) 376–9818.

j. *Comment Date:* May 13, 1988.

k. *Description of Project:* The proposed project would utilize the U.S. Bureau of Reclamation's Ridgeway Dam and Reservoir and would consist of: (1) A 11-foot, 6-inch diameter penstock connecting to the existing outlet works; (2) a powerhouse with an installed capacity of 4,100 kW; (3) a tailrace returning flow to the river a short distance downstream from the dam; (4) a 69-kV transmission line about 5.7 miles long; and (5) appurtenant facilities. The applicant estimates an average annual energy output of 23,836,000 kWh. The applicant estimates the cost of studies to be $27,000.

l. *Purpose of Project:* Project energy would be sold to local municipalities or the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Application:* Exemption (5MW or less).

b. *Project No.:* 10480-000.

c. *Date Filed:* September 24, 1987.

d. *Applicant:* Tuolumne County.

e. *Name of Project:* Phoenix Lake.

f. *Location:* At the base of the Phoenix Reservoir in Tuolumne County, California, in Section 28, T2N, R15E, M.D.B. & M.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:*

Billy H. Marr, Water Supervisor, Tuolumne County Administration Center, 2 South Green Street, Sonora, CA 95370, (209) 533-5500.

Raymond Vail and Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929-3323

i. *FERC Contact:* Donald H. Wilt, (202) 376-9807.

j. *Comment Date:* April 25, 1988.

k. *Description of Project:* The proposed project would utilize Tuolumne County Water Agency's existing Phoenix Lake Dam outlet tower, a 175-foot-long, 30-inch-diameter outlet pipe, and a 50-foot-long, 24-inch-diameter diversion pipe and would consist of the following proposed structures: (1) An 830-foot-long, 33-inch-diameter steel penstock connected to the existing 25-inch-diameter diversion pipe; (2) a powerhouse containing a turbine generator unit with a total rated capacity of 119 kW under a head of 40 feet with flows being returned to Sullivan Creek; and (3) a 500-foot-long, 12-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company line. Applicant estimates the project's annual generation at 527,000 kWh.

l. *Purpose of Project:* Project power will be sold to Pacific Gas and Electric Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3a.

12 a. *Type of Application:* License (< 5 MW).

b. *Project No.:* 10521-000.

c. *Date Filed:* December 4, 1987.

d. *Applicant:* Mahoning Hydro Associates.

e. *Name of Project:* Mahoning Creek.

f. *Location:* On Mahoning Creek near Putneyville, Armstrong County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, Md 21403, (301) 268-8820.

i. *FERC Contact:* Michael Dees (202) 376-9830.

j. *Comment Date:* May 13, 1988.

K. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Mahoning Creek Dam and reservoir and would consist of: (1) A proposed penstock 12 feet in diameter and 1,070 feet long; (2) a proposed reinforced concrete powerhouse 60 feet long by 60 feet wide by 25 feet high housing two 2,500-kW hydropower units; (3) a proposed tailrace 150 feet long, 40 feet wide and 10 feet deep; (4) a proposed 34.5-kV transmission line six miles long or an alternative 34.5-kV line two miles long; and (5) appurtenant facilities. The estimated annual energy production is 16 GWh. Project power would be sold to Pennsylvania Electric Company.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

13 a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10532-000.

c. *Date Filed:* January 11, 1988.

d. *Applicant:* Water Facilities Authority-A Joint Powers Agency.

e. *Name of Project:* WFA-JPA Regional Water Supply Energy Recovery Facilities Project.

f. *Location:* On the water transmission pipeline at three locations within San Bernardino County, Upland, California.

g. *Filed Pursuant to:* Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. *Applicant Contact:* Mr. Emmett F. Lowry, General Manager, Water Facilities Authority-A Joint Powers Agency, 1775 Benson Avenue, Upland, CA 91786.

i. *FERC Contact:* Mr. Don Wilt, (202) 376-9807.

j. *Comment Date:* April 28, 1988.

k. *Description of Project:* The proposed project would utilize the applicants' existing water supply transmission system and would be comprised of three stations. Station No. 1 would consist of a powerhouse containing two turbine generating units with a total rated capacity of 550 kW. Station No. 2 would consist of a powerhouse containing one turbine generating unit with a rated capacity of 250 kW. Station No. 3 would consist of a powerhouse containing one turbine generating unit with a rated capacity of 200 kW. The applicant estimates that the total rated capacity of the three stations would be 1,000 kW with a combined average annual energy output of 7,780,000 kWh.

1. *Purpose of Project:* Project power would be sold to local municipalities or the local power company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3b.

14 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10536-000.

c. *Date Filed:* February 1, 1988.

d. *Applicant:* Public Utility District No. 1 of Okanogan County, Washington.

e. *Name of Project:* Enloe Dam.

f. *Location:* On BLM land at the Enloe Dam on the Similkameen River in T40N, R26 and 27E near Oroville in Okanogan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Harlan Warner, P.O. Box 912, Okanogan, WA 98840, (509) 422-3310.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376-9812.

j. *Comment Date:* May 19, 1988.

k. *Description of Project:* The proposed project would consist of: (1) The existing 54-foot-high concrete arch-gravity Enloe Dam at elevation 1,004.3 feet m.s.l.; (2) an existing reservoir with a normal surface water elevation of 1,045 feet m.s.l., a gross storage capacity of 1,740 acre-feet and negligible usable storage capacity; (3) two refurbished intake structures; (4) an existing 800-foot-long wood stave penstock and a new 800-foot-long, 88-inch-diameter steel penstock; (5) two steel surge tanks; (6) an existing refurbished powerhouse containing two new generating units with a total rated capacity of 4,500 kW; (7) a tailrace consisting of two vertical cone-shaped draft tubes; and (8) a 3.5-mile long transmission line. Applicant estimates the average annual energy production to be 30 GWh and the cost of the work to be performed under the preliminary permit to be $250,000.

1. *Purpose of Project:* The power produced will be used to displace wholesale power purchases from the Bonneville Power Administration.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

15a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10497-000.

c. *Date Filed:* October 30, 1987.

d. *Applicant:* City of Tulsa, Oklahoma.

e. *Name of Project:* Lake Eucha Dam.

f. *Location:* Spavinaw Creek, Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—

h. *Applicant Contract:* Mr. W.B. Smith, Benham-Holway Power Group, 5314 S.

Yale Avenue, Tulsa, OK 74135. (918) 492–1600.

i. *FERC Contract:* Dean Wight, (202) 376–9821.

j. *Comment Date:* April 25, 1988.

k. *Description of Project:* The proposed project would consist of: (1) an existing concrete dam 2,050 feet long and 99 feet high; (2) an existing impoundment of 2,900 acres surface area and 80,000 acre-feet capacity at a normal maximum surface elevation of 778 feet NGVD; (3) an existing 60-inch-wide penstock; (4) a proposed powerhouse 30 feet wide, 25 feet long, and 25 feet high; (5) three proposed turbine-generators of 900 kW combined capacity; (6) an existing, reconductored 13.2-kV transmission line 8 miles long; and (7) appurtenant facilities. The net hydraulic head would be 75 feet. The estimated annual energy production is 6.2 GWh. Project power would be sold. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000. The existing facilities are owned by the applicant.

1. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.*

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Edward Abrams, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the

Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l* (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 10, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5639 Filed 3–14–88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3340-4]

Expert Systems for Environmental Management; Announcement of Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of workshop.

Expert systems software vendors and/or developers are invited to demonstrate their expert systems hardware and software at a workshop on "Expert Systems for Environmental Management."

The Workshop is sponsored by the U.S. Environmental Protection Agency and will be held in conjunction with the Hazardous Materials Control Research Institute's" 5th National Resource Conservation and Recovery Act (RCRA) Conference and Exhibition." The workshop will bring together developers and users of expert systems technology for addressing environmental concerns. Many of the attendees will be involved in the selection and acquisition of expert systems products for use in their government, university or commercial organizations.

The workshop will be held April 21–22, 1988, at the Riviera Hotel, Las Vegas, Nevada. Approximately twenty spaces in dividable suites or conference rooms are available on a first-come basis for literature distribution or demonstration of expert systems products. Hands-on capability for the demonstration participants is highly desired. Vendors interested in providing literature, demonstrating an expert system product, or participating in the workshop should contact the workshop coordinator:

FOR FURTHER INFORMATION CONTACT: Mr. Darwin R. Wright, Office of Research and Development, 401 M Street SW., (RD–681), Washington, DC 20460b, (202) 382–5747..

A.W. Lindsey,

Acting Director, Office of Environmental Engineering and Technology Demonostration (RD–681).

[FR Doc. 88–5588 Filed 3–14–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

March 8, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0035

Title: Application for Renewal of Auxiliary Broadcast License (Short Form)

Form No.: FCC 313-R

Action: Revision

Respondents: Business (including small business)

Frequency of Response: Every 5 years for TV; every 7 years for radio.

Estimated Annual Burden: 25 Responses; 6 Hours

Needs and Uses: Filing is required to renew licenses of remote pickup, television auxiliary, aural studio link and relay stations that are not broadcast licensees (*e.g.*, cable operators, network entities, motion picture and television producers). The data is evaluated to ensure that the licensed station is operating as authorized.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-5623 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[FHLBB No. 1712; No. AC-702]

Edgecombe Homestead and Loan Association, Tarboro, NC; Final Action; Approval of Conversion Application

Date: March 9, 1988.

Notice is hereby given that on February 29, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Edgecombe Homestead and Loan Association, Tarboro, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-5552 Filed 3-14-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224-200097

Title: Port of Houston Terminal Agreement

Parties: Port of Houston Authority of Harris County, Texas (Port), Southside Services, Inc. (SSI)

Synopsis: The proposed agreement assigns SSI to perform or have performed freight handling services at the Port's Wharves and Transit Sheds Number 21 through 23. The terminal services to be provided include the loading of cargo onto, or unloading of cargo from, land carriers at the terminal facility subject to the charges, rates and rules in the Port's tariff No. 8.

Agreement No.: 224-200098

Title: U.S. Ports Section 18 Cooperative Working Agreement

Parties: United States Public Ports, members of the American Association of Port Authorities

Synopsis: The proposed agreement provides for establishing a cooperative working agreement among United States public ports to assist the Federal Maritime Commission in developing information for its study of issues under section 18 of the Shipping Act of 1984 and to collect data and make analyses and recommendations with regard to the issues to be studied pursuant to section 18.

Agreement No.: 224-200096

Title: Port of Wilmington Marine Terminal Agreement

Parties: North Carolina State Ports Authority Senator Linie (Senator)

Synopsis: The proposed agreement provides that with respect to the operations of Senator at Wilmington, NC, Senator guarantees an annual minimum of 50,000 tons of containerized cargo with reduction of wharfage charge on tonnage in excess of the guaranteed minimum annual tonnage.

By Order of the Federal Maritime Commission.

Dated: March 10, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5585 Filed 3-14-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-5]

Port of Ponce v. Puerto Rico Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Port of Ponce ("Port") against the Puerto Rico Ports Authority ("Authority") was served March 9, 1988. Port alleges that the Authority has violated sections 10(b)(11)-(12) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(11)-(12) and 1709(d)(1), and sections 16 First and 17 of the Shipping Act, 1916, 46 U.S.C. app. 815 First and 816. The practices complained of by Port relate to the Authority's rendering of general harbor services to other commercial ports in Puerto Rico that are allegedly not likewise provided at the Port, using funds derived, in part, from port service charges assessed on vessels calling at the Port.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 9, 1989, and the final decision of the

Commission shall be issued by July 10, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5586 Filed 3-14-88; 8:45 am]

BILLING CODE 6230-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; John A. Hineman

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John A. Hineman,* Dighton, Kansas; to acquire an additional 0.94 percent of the voting shares of Dighton National Bancshares, Inc., Dighton, Kansas, and thereby indirectly acquire First National Bank of Dighton, Dighton, Kansas.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *David Ray Brooks,* Farmersville, Texas, to acquire 6.59 percent, Tommy Mayhew Lovell, Jr., Farmersville, Texas, to acquire 6.9 percent; Weldone Raymond Feagin, Jr., Farmersville, Texas, to acquire 4.64 percent; Wayne Herman May, Farmersville, Texas, to acquire 8.5 percent; Robert Armond Tedford, Farmersville, Texas, to acquire 6.44 percent; Houston Larry Lane, Farmersville, Texas, to acquire 3.51 percent; Joseph Alexander Aston III, Farmersville, Texas, to acquire 4.01 percent; Waddy Calhoun Grisham, Blue Ridge, Texas, to acquire 4.55 percent; and FBI ESOP, Farmersville, Texas, to acquire 8.81 percent of the voting shares of Farmersville Bancshares, Inc., Plano, Texas, and thereby indirectly acquire First Bank at Farmersville.

Board of Governors of the Federal Reserve System, March 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5555 Filed 3-14-88; 8:45 am]

BILLING CODE 6210-01-M

First Sun Capital Corp. 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)(l) of the Board's Regulation Y (12 CFR 225.23(a)(l)) 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 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 April 6, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Sun Capital Corporation,* Columbia, South Carolina; to engage *de novo* through its subsidiary, Republic Leasing Corporation, Columbia, South Carolina, in originating and servicing direct financing leases of equipment, participating solely as a lender in a fixed rate extension of credit (non-operating lease) with the lessee owning the equipment at the end of the lease term pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the States of North Carolina, South Carolina, and Georgia.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Community Bancorp,* Lacey, Washington; to engage *de novo* in providing courier services pursuant to § 225.25(b)(10); and performing real estate appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted throughout the states of Washington and Oregon.

Board of Governors of the Federal Reserve System, March 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5554 Filed 3-14-88; 8:45 am]

BILLING CODE 6210-01-M

Home Point Bancorp, Inc., et al.; Formation 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 April 6, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home Point Bancorp, Inc.*, Nantucket, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Nantucket Savings Bank, Nantucket, Massachusetts.

B. Federal Reserve Bank of Atlanta, (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First City Bancorp, Inc.*, Murfreesboro, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First City Bank, Murfreesboro, Tennessee.

Board of Governors of the Federal Reserve System, March 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5556 Filed 3-14-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Final Recommendations for Protecting the Health and Safety Against Potential Adverse Effects of Long-Term Exposure to Low Doses of Agents: GA, GB, VX, Mustard Agent (H, HD, T), and Lewisite (L)

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of Final Recommendations for Protecting Human Health and Safety Against Potential Adverse Effects of Long-term Exposure to low doses of agents GA, GB, VX, Mustard Agent (H, HD, T), and Lewisite (L).

SUMMARY: Agents GA, GB, VX, Mustard Agent (H, HD, T), and Lewisite (L) are now stored by the Department of Defense (DOD). Public Law 99-145 (50 U.S.C. 1521) mandates that all unitary (self-contained) lethal chemical munitions be destroyed by 1994. Public Law 91-121 and Public Law 91-441 (50 U.S.C. 1512) mandate that the Department of Health and Human Services review DOD plans for disposing of these munitions and make recommendations to protect human health. Public comment was requested on these recommendations; this notice summarizes comments received, responds to those comments, and states the final recommendations.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Linda W. Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury, Centers for Disease Control, Chamblee 27, Room 1208, MS F29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: On December 22, 1987, the Department of Health and Human Services (HHS) Centers for Disease Control (CDC) published "Recommendations for Protecting the Health and Safety Against Potential Adverse Effects of Long-Term Exposure to Low Doses of Agents: GA, GB, VX, Mustard (H, HD, T), and Lewisite (L)" in the **Federal Register** (52 FR 48458), seeking public comment. We received comments from eight respondents.

One respondent indicated that the recommendations had been sent to several agencies within their organization for review and that they had approved the statement as published. Two other respondents objected to the use of "weak" the characterize the carcinogenicity of mustard agent. Both pointed out that the term is not used by the International Agency for Research on Cancer; one noted further that the National Toxicology Program has not accepted "weak" as a standardized descriptive term. The specific terms "strong" and "weak," as applied to carcinogens, were once used in extrapolating animal data to human prediction. The way in which that was done is not now generally accepted. We agree: the word "weak" has been deleted.

One respondent objected to the statement "* * * Some evidence suggests that Lewisite might be a carcinogen * * *." and referred to a recent comprehensive review of the published literature on Lewisite as well as unpublished reports available in the library of the U.S. Army Chemical Research, Development, and Engineering Center at Edgewood Arsenal. The respondents concluded, from their review of the literature, that Lewisite was not carcinogenic. The documents do mention the same evidence for carcinogenicity which was considered by the group. We agree that the evidence available to us does not seem to be of the quality required to label a chemical as a "suspected carcinogen" but will stand by the original phrasing; "* * * *Some* evidence suggests that Lewisite *might* also be a carcinogen * * *." (emphasis added).

We were advised that the NIOSH recommended standard for occupational exposure to aresenic does not distinguish between organic and inorganic arsenic and recommends a standard of 0.002 mg (As)/m^3. The suggested control limit for Lewisite is equivalent to 0.001 mg/m^3, measured as arsenic, and is thus lower than both the OSHA Permissible Exposure Level and NIOSH's more protective recommendation. The same respondent objected to the comparison of cancer risk to risk of death by injury in industries considered nominally safe on the grounds that such a comparison supports the belief that injury rates are acceptable or irreducible. The objection is valid and the comparison has been removed.

Another respondent suggested that the recommendations would be strengthened by references. An extensive bibliography is available on request. The respondent also recommended use of a pressure-demand respirator when entering munition-storage igloos. This is in keeping with joint NIOSH-OSHA respiratory selection policy guidelines. Entry into igloos is governed by storage regulations and is not included in the Chemical Stockpile Disposal Program. HHS has no authority in matters concerning storage of chemical weapons. We therefore cannot include this recommendation under Pub. L. 91-121, 91-441, or 99-145. We will forward the suggestion to the Army Surgeon General's Office for their consideration.

An unpublished paper on the toxicology of VX was forwarded to us by an interested party. The paper suggested that there was a high probability of serious non-lethal effects with exposure to VX. The doses required to achieve these effects were not specified. Most of the paper was conjecture, based on analogy with other organophosphates. Information available in the open literature describing actual studies on VX was not used. These and other weaknesses in the paper rendered it not helpful for our deliberations; we do not concur with the conclusions of that paper.

One respondent reminded us that a portion of the stockpile is held in the Federal Republic of Germany. This was noted.

A minor typographical error, "skin" misspelled "kin," was noted by several respondents. In addition to this correction, changes have been made in the text to note the NIOSH recommendation, to convey the sense of the epidemiologic evidence on carcinogenic potency without use of the term "weak," and to delete reference to deaths by injury in industries considered nominally safe. The final text of the recommendations follows.

Recommendations: Section 1412 of Pub. L. 99–145 (50 U.S.C. 1521) mandates that the present stockpile of lethal chemical agents be destroyed by September 30, 1994. Public Law 91–121 and Pub. L. 91–441 (50 U.S.C. 1512) mandate that the Department of Health and Human Services (HHS) review Department of Defense (DOD) plans for transporting and/or disposing of lethal chemical agents and make recommendations for protecting human health and safety; HHS has delegated this authority to the Centers for Disease Control (CDC). In the absence of Federal regulatory standards, DOD has developed safety and health standards for handling these agents. Therefore, CDC reviewed the data and is making recommendations for protecting human health and safety during the transportation and/or disposal of these lethal agents.

The national stockpile of lethal chemical agents includes six chemicals:

GA (Tabun or ethyl N,N-dimethyl phosphoroamidocyanidate, CAS 77–81–6)
GB (Sarin or isopropyl methylphosphonofluoridate, CAS 107–44–8)
VX (O-ethyl-S-(2-diisopropylaminoethyl)-methyl phosphonothiolate, CAS 50782–69–9)
H, HD (Sulfur mustard or di-2-chloroethyl sulfide, CAS 505–60–2)
T (Bis(2-chloroethylthioethyl) ether, CAS 63918–89–8)
L (Lewisite or dichloro 2-chlorovinylarsine, CAS 541–25–3)

The DOD stores these agents in bulk containers and/or munitions at eight locations within the continental United States. The remainder of the stockpile is stored outside the continental United States on Johnston Atoll in the Pacific Ocean (Southwest of the Hawaiian Islands) and in the Federal Republic of Germany.

Previously, HHS has made recommendations for protecting human health from the adverse effects of acute exposure to agents GB, VX, and mustard agent. Citizens near depots where chemical weapons are stored have expressed concerns about the potential for delayed effects of acute exposure and about the potential health effects of long-term exposure to low doses of agents. (Here "low dose" means an airborne concentration of agent below the control limits.) To resolve these questions, CDC gathered data on these agents and held an open meeting to discuss the potential delayed effects of acute exposure and of adverse effects of long-term exposure to low doses of these agents. The meeting, announced in the **Federal Register** dated August 20, 1987 (52 FR 31449), was held September 29–30, 1987, in Atlanta, Georgia. The CDC invited consultants and the public. Comments from individuals rather than group comments or consensus were solicited.

Like widely used insecticides, the nerve agents GA, GB, and VX are organic compounds containing phosphorus (organophosphorus compounds). They affect nerves, muscles, and glands by inhibiting acetyl cholinesterase, an enzyme these tissues must have to function properly. Sulfur mustard (H, HD, hereafter referred to simply as "mustard agent") and Lewisite (L) are vesicants—that is, they cause chemical burns or blisters of the skin and mucous membranes, such as the conjunctiva of the eyes and the mucosa of airways. Lewisite is an organic compound containing arsenic. A sixth agent, HT, is a mixture of mustard agent, agent T (bis(2-chloroethylthioethyl) ether), and impurities. Very little is known about the long-term toxicity of agent T. Agent T has much lower volatility than the H with which it is mixed. It is not expected to constitute an airborne hazard unless mustard agent is also present at concentrations much higher than permitted. Almost all (99.97%) of the vapor released by HT is mustard agent. HT control limits will therefore be identical with those for HD, with concentrations measured as HD.

During the public meeting on the potential effects of exposure to these agents, concerns that were raised included: organophosphate-induced delayed neuropathy; electroencephalographic (EEG) or other functional changes following exposure to organophosphates; the carcinogenicity, mutagenicity, and/or teratogenicity of organophosphates; the cumulative effects of organophosphates, decreasing resistance to organophosphorus pesticides; the carcinogenicity, mutagenicity, and teratogenicity of mustard agent and Lewisite; delayed keratitis (injury to the cornea of the eye) following exposure to mustard agent; the response time, sensitivity, and specificity of monitors; the amount of agent in the various parts of the storage and demilitarization facilities; the response times and efficacy of abatement procedures in the event of an upset in plant operations or a release from storage, transportation, or incineration; use of historical monitoring in process control; and interactions of agents with other chemicals in the environment.

Published and unpublished reports of all potential adverse effects including carcinogenicity, mutagenicity, and teratogenicity for all agents were considered. Information on human carcinogenicity following wartime exposure to vesicants supplemented experimental data for mustard agent and Lewisite. Since the acute toxicity of GA and Lewisite had not been reviewed before, it was considered along with the potential long-term health effects. Reports relating delayed keratitis to mustard agent exposure were evaluated. The reports on delayed neuropathy and on EEG changes associated with poisoning by GB were available. In addition, individuals contributed critical information from their own experience and knowledge.

The ability of organophosphates to cause delayed neuropathy has been tested in domestic chickens, a sensitive indicator species. The chickens are given doses from 20 to more than 100 times the mean lethal dose and, for the chickens to demonstrate this effect, they must be protected from death by pretreatment with atropine or with atropine and an oxime. GB caused neuropathy in chickens only at doses several times greater than the mean lethal dose. Under similar conditions, VX did not induce delayed neuropathy. Neuropathy is considered an unlikely outcome from either acute intoxication with any of the nerve agents or from long-term exposure to them.

None of the nerve agents are mutagenic. Results of recently completed studies on GB and initial reports of studies on VX indicate no teratogenic effect. The EEG changes reported after intoxication with GB were considered to be of questionable significance—given the difficulty of demonstrating such changes and the absence of clinically significant effects even when EEG changes are present.

HHS had not previously reviewed standards for GA. The available information indicates that about twice as much GA as GB is needed to produce acute toxicity. Data for adverse reproductive effects are less complete for GA than for GB. The limited amount of GA present in the stockpile (4 tons) and the remoteness of the area where it will be destroyed (Tooele, Utah) provide further assurances that human health will be protected at the same control concentrations previously set for GB.

Questions related to the nerve agents proved relatively easy to resolve. The information bases are fairly complete, and there appears to be little risk either of adverse health effects from long-term exposure to low doses or of delayed health effects from acute exposure. On the basis of the evidence reviewed, HHS concludes that human health will be adequately protected from exposure to GA, GB, and VX vapor at the concentrations shown in Table 1. Even long-term exposure to these concentrations would not create any adverse health effects. At these concentrations, no detectable reduction in resistance to organophosphorus pesticides would occur.

TABLE 1.—CONTROL LIMITS (mg/m^3) FOR CHEMICAL AGENTS [1]

Agent	General population	Workers
GA, GB	0.000003 ($3X10^{-6}$)	0.0001 ($1X10^{-4}$).
VX	0.000003 ($3X10^{-6}$)	0.00001 ($1X10^{-5}$).
H, HD, HT [2].	0.0001 ($1X10^{-4}$)	0.003 ($3X10^{-3}$).
L	0.003 ($3X10^{-3}$)	0.003 ($3X10^{-3}$).
Averaging Time.	72 hours	8 hours.

[1] Protection against exposure to agents in aerosol and liquid form must be sufficient to prevent direct contact with the skin and eyes.

[2] DAta supporting the ability to monitor for mustard agent at 0.0001 mg/m^3 at all sites should be developed. HT is measured as HD.

The control limits contained in Table 1 are substantially below concentrations at which adverse effects have been observed for mustard agent and Lewisite. Delayed keratitis and chronic bronchitis are effects that follow acute symptomatic intoxication with mustard agent and would therefore not be expected at the limits proposed. Mustard agent is not a teratogen, but it is a mutagen. Because HHS accepts that mustard agent is a human carcinogen and because some evidence suggests that Lewisite might also be a carcinogen, lower levels of exposure are of potential concern. Although the data suggest that mustard agent is less potent than such other known human carcinogens as tobacco, radon, and chromates, the data do not permit an estimate of the carcinogenic potency or the exact degree of the carcinogenic risk with confidence. Quantitative risk assessments prepared by the Oak Ridge National Laboratories and by a community study group at Edgewood, Maryland were considered. On the basis of a review of the methodology, we conclude that the many uncertainties in the method employed preclude its being used to define precisely the acceptable exposure limits to mustard agent. We conclude that the proposed work-place limits appear to provide adequate protection for workers during the limited time of potential exposure prior to completion of the Chemical Stockpile Demilitarization Program. Control of the stack emissions and the work-place air in accordance with the limits for mustard agent given in Tables 1 and 2 will amply protect a general population 1000 meters or more from a demilitarization site or transportation route.

Exposure to or contact with mustard agent by any route—respiratory, skin, or oral—should be limited to the extent practicable. This can be done by using appropriate engineering controls, personel protective equipment, and work practices. Concentrations in the work-place environment and surrounding air should be measured and verified by instruments that can reliably detect concentrations at or below the control limits. Rail cars or other transport vehicles should be treated as work places for this purpose. At this time, the most sensitive monitors can reliably measure 0.003 mg/m^3 of mustard agent and Lewisite in the work-place air. The cycle time for mustard agent is 8 minutes—that is, the test is automatically repeated every 8 minutes. The cycle time for Lewisite is 12 hours. This level of exposure would be adequate protection for public health. The Army has reported the capability to monitor for mustard agent at concentrations as low as 0.0001 mg/m^3 using a 12-hour sample time. This capability has been proven under usual ambiet conditions at only one site. If it will not delay disposal, it is recommended that such capacity be demonstrated at and used for all sites where mustard agent will be transported or destroyed. The capacity to conduct such monitoring at all sites with mustard agent would represent a redundant safety factor.

Toxicological information specific to Lewisite is sparse. More is known about arsenic-containing compounds in general, but caution must be used in extrapolation. The recommended control concentration limit, 0.003 mg/m^3, (measured as Lewisite) in air is equivalent to 0.001 mg/m^3 measured as arsenic and should be adequate to protect public health. The Occupational Safety and Health Administration has promulgated a standard of 0.5 mg/m^3 (measured as arsenic) for organic arsenic concentrations in work-place air. The National Institute for Occupational Safety and Health (NIOSH) has recommended a standard of 0.002 mg/m^3 for all forms of arsenic. The proposed Lewisite control limits are lower than the existing OSHA occupational standard for organic arsenic by a factor of approximately 500 and are lower than the NIOSH recommended standard by a factor of 2. The Army should seek, through engineering design and operational controls, to minimize exposure to Lewisite. The facts that Lewisite will be destroyed only at Tooele, Utah, a facility remote from population centers, and that the maximum burning time for destruction of the existing stockpile of Lewisite is estimated to be less than 30 days provide additional assurance that human health will not be endangered.

Certain monitoring criteria are essential because any recommended exposure limit is only as good as the capability to measure and verify the exposure concentrations as they may occur. Specifically, the Army has agreed to provide data to CDC that document accurate and reproducible monitoring for agents at the recommended exposure limits and at each transportation or demilitarization facility monitored.

In summary, the control limits specified in Table 1 for all agents listed are considered protective of human health. The relatively short duration of the disposal program provides an additional margin of safety.

Control limits for stack emissions are primarily an engineering matter. These limits should (a) be attainable by a well-designed, well-constructed, and well-operated incineration facility; (b) give an early indication of upset conditions; and (c) be accurately measureable in a timely manner.

Limits based on these criteria will restrict emissions to concentrations well below those that would endanger health; they will usually prove more restrictive than a limit set on health bases alone. CDC has found that the allowable stack concentrations proposed by the Department of the Army. (Table 2) meet the criteria above and are more restrictive than limits set on health bases alone; therefore, CDC recommends no changes in the concentrations. The concentrations must be evaluated by air dispersion modeling of worst-case-credible events and conditions specific to each site to ensure that the control limits for the general population and work place (Table 1) would not be exceeded as a consequence of releases at or below the allowable stack concentrations.

TABLE 2.—ALLOWABLE STACK CONCENTRATIONS (MG/M^3) FOR CHEMICAL AGENTS

Agent	Maximum allowable stack concentration
GA, GB	0.0003 (3×10^{-4}).
VX	0.0003 (3×10^{-4}).

TABLE 2.—ALLOWABLE STACK CONCENTRATIONS (MG/M^3) FOR CHEMICAL AGENTS—Continued

Agent	Maximum allowable stack concentration
H, HD, HT[1]	0.03 (3×10^{-5}).
L	0.03 (3×10^{-5}).

[1] HT is measured as HD.

Dated: March 8, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-5573 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Medicaid Program; Reconsideration of Disapproval of a Utah State Plan Amendment; Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 12, 1988 in Denver, Colorado to reconsider our decision to disapprove Utah State Plan Amendment 12-87.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket clerk by March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4468.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Utah State Plan Amendment 12-87.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Utah SPA 12-87 proposes to limit the scope of physical therapy and/or physical medicine services provided as outpatient hospital services, to limit physical medicine services provided as physician services, and to limit physical therapy as an optional service to individuals approved to receive SNF or ICF services.

The issue in this matter is whether Utah SPA 12-87 violates section 1902(a)(10) of the Social Security Act and Federal regulations at 42 CFR 440.10 through 440.50, 42 CFR 440.230(c), 42 CFR 440.230(d) and 42 CFR 440.240(b).

Section 1902(a)(10) of the Social Security Act mandates that an approvable State plan must provide "for the inclusion of at least the care and services listed in paragraphs (1) through (5) of section 1905(a) * * *" for categorically needy groups described in section 1902(a)(10(A). Among the care and services listed in paragraphs (1) through (5) are "outpatient hospital services" and "physicians' services" (sections 1905(a)(2)(A) and 1905(a)(5)). Pursuant to this statutory requirement, the Medicaid regulations require that a State plan must specify, at a minimum, that categorically needy recipients are provided the services as specified in sections 42 CFR 440.10 through 440.50. Included in those provisions are outpatient hospital services and physicians' services, broadly defined. Additionally, the regulations at 42 CFR 440.230(c) provide that the State agency may not arbitrarily deny or reduce the amount, duration, or scope of the minimum services required for the categorically and medically needy described in sections 42 CFR 440.210 and 440.220 to otherwise eligible recipients solely because of their diagnosis, type of illness, or condition. The full scope of these mandatory services must be provided, including components of those services that separately could be optional services.

Therefore, to the extent that the Utah SPA denies Medicaid coverage for physical therapy or physical medicine services in the mandatory outpatient hospital setting, HCFA has determined the State plan fails to meet the legal requirement for approval. HCFA believes that the State may not administer a State plan which denies coverage of any medically necessary service or procedure within the five required categories even if it is also coverable as an optional service. (The *Beal* and *Katz* cases which the State cites merely holds that a State cannot be required to cover procedures that are *not* medically necessary within the five required categories.) In addition, physical medicine, if provided by a physician or under the direction of a physician, is a physician's service and may not be limited to those needing a specific level of care.

Section 42 CFR 440.240(b) provides that services available to any individual either in the categorically or medically needy groups are equal in amount, duration, and scope for all recipients within the group. Therefore, physical therapy and/or physical medicine services available to nursing home patients as outpatient hospital services must be made equally available to all individuals within the categorically needy group or within the medically needy group. Similarly, HCFA believes the State cannot limit physical medicine, which is a physician service, to a segment of the categorically needy or medically needy population. In addition, while physical therapy is an optional service under section 1905(a)(11), HCFA believes that if the State chooses to provide it under that option, it cannot be limited to such fragments of its categorically needy and medically needy groups as those who are eligible for SNF or ICF care. Although a State may place appropriate limits on a service based on medically necessity criteria or utilization control procedures (42 CFR 440.230(d)), HCFA believes that the State in this case has not demonstrated that the limitation is being placed on the service due to medical necessity or as a utilization control procedure. Therefore, HCFA has determined Utah SPA 12-87 violates 42 CFR 440.230(d) and 42 CFR 440.240(b).

The notice to Utah announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Roderick L. Betit,

Director, Division of Health Care Financing, Utah Department of Health, 288 North 1460 West, Salt Lake City, UT 84116.

Dear Mr. Betit: This is to advise you that your request for reconsideration of the decision to disapprove Utah State Plan Amendment (SPA) 12-87 was received on February 8, 1988.

Utah SPA 12-87 proposes to limit the scope of physical therapy and/or physical medicine services as outpatient hospital services, to limit physical medicine services provided as physician services, and to limit physical therapy as an optional service. The State proposes that physical therapy services and/or physical medicine services performed as outpatient hospital services be restricted to individuals who have been approved by the Department to receive skilled nursing facility (SNF) or intermediate care facility (ICF) services when the services have been ordered by a physician. The SPA further provides that physical medicine provided as physician services is limited to individuals approved to receive SNF or ICF services and that physical therapy provided as an optional service is also limited to individuals approved to receive SNF or ICF services.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are two issues in this matter. The first issue is whether the Utah SPA violates section 1902(a)(10) of the Social Security Act by denying Medicaid coverage for physical therapy and/or physical medicine services in the outpatient hospital setting, physical medicine as a physician service, or physical therapy as an optional service. The second issue is whether the State has demonstrated that the limitations they have placed on services are being placed on the services due to a medical necessity or as a utilization control procedure as required by 42 CFR 440.230(d) and 42 CFR 440.240(b).

I am scheduling a hearing on your request to be held on April 12, 1988 at 10:00 a.m. in Room 431, Federal Building, 1961 Stout Street, Denver, Colorado. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4468.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 9, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-5628 Filed 3-14-88; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 51, No. 138, pp. 26060 and 26061, dated Friday, July 18, 1986) is amended to reflect functional changes for the Division of Contract Administration (DCA), Office of Qualifications (OQ), Office of Prepaid Health Care. Both OQ and DCA functional statements have been updated to include the responsibility for: (1) The prepaid health care contracting activities, (2) the Health Maintenance Organization and Competitive Medical Plan reconsideration function, and (3) the oversight of the Medicaid contract approval function which was mandated by the Omnibus Budget Reconciliation Act of 1986.

The specific amendments to Part F. are described below:

- Sections FC.20.B., Office of Qualifications (FCA) and FC.20.B.2., Division of Contract Administration (FCA2) are deleted in their entirety and replaced by the following new sections.

B. Office of Qualifications (FCA)

Establishes qualification standards and determines the acceptability of entities seeking to become Federally "qualified." Refines the review procedures as necessary to facilitate the qualification process. Coordinates and insures the consistency of regional office activities related to the qualification process. Assists the Office of the General Counsel in the development of legal actions concerning qualification status. Performs liaison activities related to qualification functions. Develops policy and regulatory proposals related to qualification. Evaluates the impact of policies, legislation, and regulations on the ability of projects to become qualified and provides guidance as to the interpretation of policy guidelines and regulations related to qualification. Administers and promotes prepaid health plan participation in the Medicare program. Responsible for overseeing all aspects of Medicare contract administration with Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), Health Care Prepayment Plans and national organizations. Provides oversight of regional offices activities related to prepaid health care contracting. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the areas of contract performance, plan enrollment, and payments. Uses forecasting techniques to determine the trends and future growth of the prepaid health care industry. Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program. Responsible for processing reconsideration cases which result when a Medicare HMO or CMP enrollee disagrees with a plan's decision on payment and/or the provision of services. Develops guidelines, policies, and procedures for use by the regional offices when reviewing and approving/disapproving State Medicaid agency contracts with prepaid health plans. Responsible for liaison, information exchange, and technical assistance regarding Medicaid capitation issues between HCFA and the State agencies.

2. Division of Contract Administration (FCA2)

Administers and promotes prepaid health plan participation in the Medicare program. Develops procedures for evaluating prepaid health plan contract applications, contract negotiation and implementation, and monitoring contractor compliance. Provides oversight of regional office activities related to prepaid health care. Oversees all aspects of Medicare contract administration with Health Maintenance Organizations (HMOs), Competitive Medical Plan (CMPs), Health Care Prepayment Plans and national organizations which include: (1) Establishing and interpreting contract policy, (2) reviewing initial contract applications, contract renewals, and contract modifications and preparing recommendations for approval/disapproval, (3) coordinating HMO and CMP initiated nonrenewals, (4) preparing recommendations for nonrenewals and terminations initiated by HCFA, and (5) acquiring necessary clearance of contracting activities with the Office of the General Counsel. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the area of contract performance. Uses forecasting techniques to determine the trends and future growth of the prepaid health care industry. Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program. Evaluates the impact of policies and legislation on prepaid health care operations, proposes alternative, appropriate courses of action, and amends guidelines, manuals, and other operational documents, as necessary. Maintains liaison with national prepayment plan associations and represents the Office of Prepaid Health Care at national meetings. Provides technical assistance to regional office components, consultant groups, and prepaid health plans. Plans, directs, and coordinates the overall processing of reconsideration cases which result when a Medicare HMO or CMP enrollee disagrees with a plan's decision on payment and/or the provision of services. Develops guidelines, policies, and procedures for use by the regional offices when reviewing and approving/disapproving State Medicaid agency contracts with prepaid health plans. Acts as consultant to regional offices, State agencies, and HMOs on policy issues regarding prior approval of Medicaid prepaid health plan contracts over $100,000. Responsible for liaison, information exchange, and technical assistance regarding Medicaid capitation issues between HCFA and the State agencies.

Dated: February 22, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-5629 Filed 3-14-88; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 48, No. 196, pp 46434-46448, dated Wednesday, October 12, 1983) is amended to reflect a change in the organizational structure of the Health Standards and Quality Bureau (HSQB), Associate Administrator for Operations (AAO). HSQB is being reorganized to accommodate the need for increased program emphasis.

The specific changes to Part F. are as follows:

• Section FP.20.C. Health Standards and Quality Bureau is amended by deleting every functional statement after the Bureau functional statement and replacing them with the following updated functional statements, organization titles and administrative codes.

1. Management Resources Staff (FPE-1)

Directs and manages the Bureau's management and administrative operations including facilities management, space utilization, records, publications, travel, correspondence, printing, mail distribution, regulations and issuance control, equipment management, supply operations, facilities maintenance, safety, security, telephone systems and parking. Plans, directs, and administers the Wang office automation activities for all Associate Administrator for Operations' bureaus including access to shared and local data bases, and other office information activities. Plans, directs and coordinates the Bureau's correspondence and public inquiries activities and all related paperwork management functions. Administers the Bureau's personnel utilization and position management programs as well as the Bureau's training and staff development programs. Develops annual and long-range administrative budgets and operating plans for the Health Standards and Quality Bureau. Reviews and processes requests for procurement or purchase and provides required contract support, service and consultation. Initiates and develops financial data and analytical reports on operations. Allocates and reprograms approved funds within the Bureau policies and guides to assist program divisions in formulating budget estimates. Develops, implements and maintains a management planning and control program for the Bureau to ensure the efficient and effective utilization of available resources including: (a) Bureau-wide workplanning and work measurement systems, (b) organization and operational analysis studies and (c) coordination and control of a variety of planning, reporting and monitoring systems required by the Office of Management and Budget, Department of Health and Human Services and other Health Care Financing Administration components. Researches and evaluates new management concepts and techniques for improving the Bureau's management practices and operations.

2. Office of Survey and Certification (FPE5)

Develops and establishes procedures and oversees the implementation and enforcement of health and safety standards for providers and suppliers of health services under Medicare and Medicaid. Administers and monitors the nationwide Medicare and Medicaid provider and supplier certification program. Develops procedures/guidelines for regional certification responsibilities under Medicare and Medicaid. Monitors and validates the application of health and safety standards and the adherence to Medicare and Medicaid policies by State survey agencies and other approved accrediting bodies. Monitors and evaluates regional performance of oversight responsibilities in survey and certification. Reviews the validity and effectiveness of existing standards. Develops and analyzes national data on the administration of the Medicare and Medicaid standards and certification program and develops methods for improvement. Conducts surveyor training, informational and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid program.

a. Division of Long Term Care Services (FPE55)

Directs and coordinates activities that implement, enforce and monitor health quality and safety standards and other health care procedures for long term care facilities under Medicare and Medicaid. Coordinates and applies regulations, procedures and guidelines for the improvement of standards enforcement and validation processes. Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality and cost of long-term care services and initiates new or revised instructions or standards, as necessary. Reviews and maintains guidelines and instructions for interpretation, implementation and enforcement of health quality and safety standards by the regional offices and State survey agencies. Prepares provider participation materials and instructions. Develops survey and certification forms utilized by State survey agencies in the survey and certification process. Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and accrediting organizations whose standards and enforcement processes are deemed to meet Federal requirements for the Medicare and Medicaid programs. Maintains liaison with professional groups and standards setting organizations. Serves as the focal point for responding to regional office, State agency, Congressional, organizational and individual inquiries relating to application of health and safety requirements and certification procedures for participating providers.

b. Division of Systems Management and Data Analysis (FPE56)

Maintains Section 1864 Agreements and oversees regional office (RO) 1864 negotiations and approval. Responsible for financial operations, including funding requirements and budget justification, of the Medicare and Medicaid State certification program. Designs, tests and manages the centralized Medicare/Medicaid Automated Certification System (MMACS) to provide program related and health management information on all providers and suppliers participating in the Medicare and Medicaid programs. Develops data input and output requirements and specifications for modification of computer processing activities. Provides technical assistance and training to central and RO personnel on the operations of MMACS equipment, use of forms, and utilization of data output. Develops new approaches for survey and certification on the basis of needs identified through MMACS data, RO direct surveys, comments from State survey agencies and other program areas. Tests improvements in the State agencies (SAs) certification process including modification of reporting procedures, utilization of personnel and use of financial incentives. Develops procedures for evaluating the effectivenes of RO performance and oversight of State survey agency performance. Collects and analyzes data derived from MMACS for use by ROs and SAs in pinpointing specific certification problems and for development of criteria and procedures to assess the quality of care being provided by Medicare and Medicaid providers. Collects, analyzes and studies data provided from the MMACS data system on a routine and special basis for use by ROs and SAs to identify specific certification and health and safety problems. Develops criteria and procedures through data analysis to assess the quality of care being provided by Medicare and Medicaid providers.

c. Divison of Hospitals and Ambulatory Services (FPE58)

Directs and coordinates activities that implement, enforce, and monitor health quality and safety standards and other health care procedures for acute care providers and suppliers under Medicare and Medicaid. These providers and suppliers include hospitals, rural health clinics, End-Stage Renal Disease facilities, laboratories, physical therapists in independent practice, and home health agencies, etc. Coordinates and applies regulations, procedures and guidelines for the improvement of standards enforcement and validation processes. Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality and cost of provider and supplier services, and initiates new or revised instructions or standards, as necessary. Reviews and maintains guidelines and instructions for interpretation, implementation and enforcement of health quality and safety standards by the regional offices (ROs) and State survey agencies. Prepares provider and supplier participation materials and instructions. Develops survey and certification forms and procedures utilized by State survey agencies in the survey and certification process. Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and other accrediting organizations whose standards and enforcement processes are deemed to meet Federal requirements for the Medicare and Medicaid programs. Conducts liaison with other government organizations, professional groups, and standards setting organizations. Serves as the focal point for responding to RO, State Agency, Congressional organizational and individual inquiries relating to the application of health and safety requirements and certification procedures for participating acute care providers and suppliers.

d. Division of Program Operations (FPE59)

Reviews State agency (SA) performance by conducting onsite reviews and assisting regional offices in program and administrative reviews. Reviews SA certification process with a view to improve management of the survey and certification process. Performs special studies to improve the survey and certification process and prepare guidelines and instructions for regional office (RO) and SA use. Develops procedures for the administration of provider agreements and revises, as needed, the State Operations and Regional Office Manuals. Maintains a system of communications to SAs and ROs relating to provider survey and certification and SA management. Develops and conducts surveyor training and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid programs. Updates existing training materials to state of the art techniques.

3. Office of Peer Review (FPE3)

Coordinates implementation of peer review and other medical review organizations. Develops and interprets policies related to the conduct of peer review at various levels of care. Develops and implements operational procedures and instructions relating to fiscal management of peer review programs, including the principles of reimbursement for review, development of program related budgets, accounting procedures, reports management, statistical reporting, and auditing requirements applicable to such peer review organizations. Develops, implements, and maintains data systems in support of the Office of Peer Review data requirements for the management of the peer review program and contracts. Establishes guidelines relating to the oversight of peer review and other medical review organizations. Evaluates and provides advice and assistance to regional offices in overseeing fiscal and program management activities. Directs and oversees the End-Stage Renal Disease program.

a. Division of Program Operations (FPE31)

Provides overall programmatic and technical management of contracts and any other financial agreements with organizations conducting medical reviews including establishment of expenditure levels, final approval of funding requests and resolution of audit findings. Provides program guidance and assistance to regional office staff in performance of their responsibilities. Develops and monitors plans for funding of Peer Review Organizations (PROs). Defines reporting requirements for PROs and other medical review entities. Develops, implements and administers a comprehensive system for assessment of individual PROs to determine compliance with program requirements and to document the effectiveness and impact of their activities. Initiates and designs studies to analyze data provided through the Office of Peer Review data systems on routine and as needed basis.

b. Division of Review Programs (FPE32)

Develops and interprets review methodolgies and systems for all programs related to Peer Review Organizations' review of medical necessity, reasonableness, quality, and appropriateness of services (e.g., ancillary, inpatient, outpatient, or suppliers of practitioner care) reimbursed under Titles XVII and XIX of the Social Security Act. Develops and interprets policies related to the conduct of peer review at various levels of care. Communicates and interprets the Health Care Fianancing Administration's medical review policies to peer and other medical review organizations and provides or arranges for the provision of technical assistance. Develops and interprets operational policies for the involvement of physicians and other health care professionals in the conduct of peer review. Develops, with other Office of Peer Review components, criteria for objective setting and the application of norms, criteria and standards of peer review. Develops criteria for evaluation of peer review.

Develops and interprets medical review policies regarding the impact of review on technical issues such as waiver of liability, inappropriate level of care, "grace days", and denials of reimbursement based on medical necessity and substandard quality with attendant reconsiderations and appeals. Monitors legislative, regulatory and operational developments related to medical review. Identifies and initiates necessary changes resulting from such developments. Develops legislative agenda and proposals related to statutory changes in medical review policies or procedures. Serves as a technical resource within the Bureau of resolving medical review issues and providing assistance on other program decision areas.

c. Division of Systems Management (FPE33)

Establishes national policies for collection and processing of peer review data and directs and monitors the End Stage Renal Disease (ESRD) Network program. Designs, operates, monitors, maintains and, as necessary, revises the Peer Review Organization (PRO) Management Information System (PMIS), which includes a variety of data in support of the Office of Peer Review (OPR) and regional office medical review branch Automatic Data Processing (ADP) requirements. Responsible for the central office and regional Dispersed Terminal Network which is used to access other Health Care Financing Administration (HCFA) data systems. Designs, tests, and implements new component subsystems using both personal computers and mainframe hardware; develops data input and output requirements, as well as specifications for the modification of systems processes to adapt to new forms, policies, procedures, and subsystems. Develops and installs the necessary procedures for report and quality control, including screening, editing, logic, and consistency. Analyzes and designs methodolgy for submission of data to OPR ADP systems. Designs, tests, implements, and maintains automated software systems, manual systems, and data bases with emphasis on assuring the accuracy of reported information and retrieval capabilities supportive of program and management information needs. Consults with other components to identify existing or planned data systems strategic to management and program activities. Plans and develops new systems to generate management and analytical information from PRO deliverables and other data sources and meet the needs of management. Performs the Systems Security Officer functions for the Health Standards and Quality Bureau. Provides technical assistance in implementing and maintaining ADP systems to other components and the ROs through conducting regional workshops and training sessions; developing technical assistance materials; and maintaining ongoing liaison with affected systems personnel. Responds to special nonroutine requests for PMIS data from congressional committees, general public, professional organizations, and other government offices. Manages the interface of OPR data with external components and organizations to ensure the compatibility of data systems with HCFA data policy, as articulated by the Bureau of Data Management and Strategy Directs and reviews all aspects of the ESRD Network program including quality assurance initiatives, data gathering, contractor performance, organ procurement, fiscal procedures, liaison with Congress and outside organizations, and technical assistance to the ESRD organizations.

4. Office of Program Assessment and Information (FPE6)

Oversees a variety of research techniques to review the quality of care activities in health care settings and develops the strategy to oversee these functions to determine the quality of care for all Medicare/ Medicaid beneficiaries. Directs and monitors the research, assessment and dissemination of information on the quality of care. Disseminates this information to the public and the professional medical community. Directs the development of strategies for improving the assessment of quality of health care by utilizing a variety of research and analytical techniques. Maintains liaison with other Health Care Financing Administration components, the Department of Health and Human Services, Congress, other government organizations and external professional and medical organizations.

a. Division of Quality of Care Assessment (FPE61)

Utilizes a variety of operations research, epidemiological, statistical, and other analytic techniques to review quality of care activities performed by Health Standards and Quality Bureau and its contractors. Initiates sophisticated statistical and operations research processes to measure the impact of enforcement and review on the outcomes of health care services supported by Medicare and Medicaid. Develops data collection instruments and organizes acquisition of medical and economic data through the Peer Review Organizations (PROs) and other contractors as appropriate. Using the Peer Review Management Information System, develops and manages the data on HCFA mainframe, mini and microcomputers. Develops and implements systems for screening the data by PROs and the Health Standards and Quality Bureau. Designs and implements mathematical and statistical techniques for the assessment of the health status of Medicare and Medicaid beneficiaries and to assess the effectiveness of the quality of care in all health care settings. Assesses the health status and trends of Medicare beneficiaries to determine the impact of PRO activities. Analyzes variations of utilization rates and outcomes of care (mortality, morbidity, disability, costs) to identify conditions and procedures which require focused review. Evaluates the effectiveness of health care performed in hospital and ambulatory care settings to ascertain the causes of the variations and to assist the PROs in the development of objective standards for review. Develops an overall strategy and evaluation plan to produce information to assess review techniques; health care services provided; health care outcomes; and identify quality of care problems.

b. Division of Program Coordination and Information (FPE62)

Develops, coordinates, analyzes and disseminates information on the method and procedures for quality of care assessment and the results of these assessments. Coordinates and oversees the communication of this information to the public and professional medical community. Provides information on the effectiveness of health care services provided to the Medicare population in terms of the outcomes and impact of medical intervention on cost, disability, morbidity, mortality, diagnostic subcategories, and health status. Develops, analyzes, and provides comprehensive and systematic information to provide feedback on the quality of medical care delivered to Medicare beneficiaries for detection and correction of quality of care problems, payment activities, and educational purposes. Establishes specifications for the reporting and dissemination of this information. Maintains liaison and coordinates with other components within the Health Care Financing Administration, Department of Health and Human Services, other government agencies and professional and medical groups such as American Medical Association, American Health Association, etc., and is the focal point of the agency for the release of information on quality of care.

Date: February 22, 1988.

William L. Roper,

Administrator.

[FR Doc. 88-5630 Filed 3-14-88; 8:45 am]-

BILLING CODE 4120-01-M

Food and Drug Administration

[Docket No. 84F-0407]

Concentrados Marinos, S.A.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to a future filing of a petition (FAP 2A3665) proposing that the food additive regulations be amended to provide for the safe use of fish protein concentrate as a food supplement.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 2, 1985 (50 FR 180), FDA published a notice that it had filed a petition (FAP 2A3665) from Concentrados Marinos, S.A., P.O. Box Casilla 4441, Lima 100, Peru, that proposed to amend Subpart D of Part 172 (21 CFR Part 172) of the food additive regulations to provide for the safe use of fish protein concentrate as a food supplement. Concentrados Marinos, S.A. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5560 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0055]

J.M. Huber Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the J.M. Huber Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a modified sodium aluminosilicate (modified kaolin clay) in the manufacture of paper and paperboard for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4063) has been filed by the J.M. Huber Corp., Route 4, Macon, GA 31298, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of a modified sodium aluminosilicate (modified kaolin clay) in the manufacture of paper and paperboard for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5561 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87P-0198]

Dessert Mousse; Request for Information on Need To Establish U.S. Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed by Velvette Foods, Inc., proposing the establishment of a U.S. standard of identity for dessert mousse. The agency is requesting data and information to assist it in determining whether such a standard would be in the best interest of consumers.

DATE: Comments by May 16, 1988.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0109.

SUPPLEMENTARY INFORMATION: Velvette Foods, Inc., P.O. Box 854, Ardmore, PA 19003, has filed a petition to establish a U.S. standard of identity for dessert mousse in 21 CFR Part 135. The statement of grounds submitted by the petitioner in support of the proposal is as follows:

Statement of Grounds

Interest of Petitioner

Presently, there is no standard of identity for dessert mousse, mousse dessert, or any other mousse concoction. Velvette Foods' principal business is the manufacture of dessert mousse, most of which is chocolate flavored and marketed in half pint, one pint, and two and one-half gallon tubs. The company also markets a chocolate mousse sandwich. The petitioner contends that authentic mousee demands a very specific formulation and that it has spent several years perfecting it for the mass retail market.

Facts Relied Upon by Petitioner

Mousse is a French word which literally means "froth." The reference to froth undoubtedly refers to the beaten egg whites invariably used as a stabilizing agent in mousse concoctions. The egg whites give mousse its unique texture and stability at ambient (above 40° F temperatures.

Gelatin is often used in place of egg whites with indistinguishable results. According to the unabridged edition of the Random House Dictionary, mousse is a sweetened preparation with a whipped cream base, often stabilized with gelatin and chilled, e.g., chocolate mousse.

Like many classic food preparations, the origin of the technique for making mousse is lost. However, certain criteria for the production of authentic mousse can be noted from various commonly accepted recipes. These recipes, of diverse origins, show that despite variants there exists a specificity to the formula for dessert mousse. Before a confection can truly be called "mousse," all of the characteristics and ingredients outlined below must be present. Classic dessert mousse will not melt, as opposed to ice cream, sherbet, and other frozen dairy desserts, because of the protein bond created by the egg whites. Chocolate is the most popular flavoring.

However, mousse is made with a myriad of flavorings, fruits, and nuts.

After considering this petition, FDA has concluded that it does not have sufficient information to make a determination as to whether promulgation of the requested regulation would be in the best interests of consumers.

FDA, therefore, is by this notice requesting that interested persons submit all possible data and information as to the need for such a standard as well as on a number of factors including, but not limited to, the following provisions set forth in the Velvette Foods' petition:

(1) Frozen mousse would be defined as a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in paragraph (b) of the U.S. standard of identity for ice cream and frozen custard (21 CFR 135.110), except that butter oil, sweet cream buttermilk, condensed sweet cream buttermilk, and dried sweet cream buttermilk may not be used. (The other optional dairy ingredients permitted include dried cream, plastic cream, butter, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, and those modified whey products generally recognized as safe.)

(2) Frozen mousse would be required to contain the following ingredients: fresh heavy cream (32 to 40 percent butterfat) (primary ingredient), sugar, egg yolk as the emulsifying agent, egg white or gelatin as the protein stabilizer, and cocoa in the chocolate flavor in a quantity greater than 8 percent, by weight.

(3) The fat content in the finished mousse would range from 16 to 20 percent, except that nonchocolate flavored mousse would have a fat content of 20 percent or more in order to achieve the proper consistency.

(4) Additional water would not be permitted.

(5) Caseinates and gums, such as xanthan gum, guar gum, and carageenan, etc., would not be permitted.

Any comments submitted in support of establishing a U.S. standard for this food must be supported by appropriate information and data regarding the impact on small businesses consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354).

Interested persons may, on or before May 16, 1988, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 4, 1988.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5562 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 83F-0013 and 83F-0014]

Biosearch Medical Products, Inc.; Withdrawal of Petitions for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of the petitions (FAP's 3A3681 and 3A3682) proposing that the food additive regulations be amended to provide for the safe use of a mixture of essential amino acids and nitrogen-free analogs of amino acids for special dietary use in patients with chronic renal failure and for the safe use of a mixture of the ornithine salts of branched-chain ketoacids for special dietary use in patients with chronic liver disease, respectively.

FOR FURTHER INFORMATION CONTACT: Arthur L. Lipman, Jr., Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b)) the following notice is issued:

In accordance with § 171.1 *Petitions* (21 CFR 171.1), FDA has withdrawn the petitions (FAP's 3A3681 and 3A3682) filed originally by Organon, Inc., West Orange, NJ 07052, and now owned by Biosearch Medical Products, Inc., 35 Industrial Parkway, P.O. Box 1700 Somerville, NJ 08876.

The notice of filing for FAP 3A3681, published in the Federal Register of March 1, 1983 (48 FR 8592), proposed that the food additive regulations be amended to provide for the safe use of a mixture of essential amino acids for special dietary use in patients with chronic renal failure. The notice of filing for FAP 3A3682, also published in the Federal Register of March 1, 1983 (48 FR 8592), proposed that the food additive regulations be amended to provide for the safe use of a mixture of the ornithine salts of branched-chain ketoacids for special dietary use in patients with chronic liver disease.

The petitioner was notifed by letter of June 17, 1983, that consideration of the petitioned uses for both special dietary supplements would require the submission and evaluation of specific additional data to support such uses. Because Biosearch Medical Products, Inc., acquired the rights to these petitions shortly before the requested data were due, they requested a waiver of the deadline by letter of December 16, 1983. On February 3, 1984, FDA commented on protocols for studies that had been submitted by the petitioner by letter of August 25, 1983. By letter of June 3, 1986, FDA requested that the necessary data be submitted within 30 days or FDA would consider the petitions withdrawn. As the required information has not been submitted, the petitions are now considered by the agency to be withdrawn without prejudice in accordance with § 171.1(j) (21 CFR 171.1(j)), which requires that such requested information be submitted within 180 days after filing of the petition or it will be considered withdrawn without prejudice. Future considerations of the special dietary uses of the salt mixtures will require submission of new food additive petitions.

Dated: March 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5619 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0098]

Drug Export; Intal®Nebulizer Solution (Cromolyn Sodium Inhalation, USP)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fisons Corp. has filed an application requesting approval for the export of the human drug Intal® Nebulizer Solution (cromolyn sodium inhalation, USP) to the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any furture inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirment, the agency is providing notice that Fisons Corp., Two Preston Court, Bedford, MA 01730, has filed an application requesting approval for the export of the drug Intal® Nebulizer Solution (cromolyn sodium inhalation, USP), to the United Kingdom. This drug is indicated in the management of patients with bronchial asthma. The application was received and filed in the Center for Drug Evaluation and Research on March 1, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 3, 1988.

Sammie R. Young,

Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-5620 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Delegation of Authority; Director, Bureau of Health Professions

Notice is hereby given that in furtherance of the delegation of February 17, 1988, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), the Administrator, HRSA, has delegated to the Director, Bureau of Health Professions, with authority to delegate, all of the authorities under section 1921 of the Social Security Act, Information Concerning Sanctions Taken by State Licensing Authorities Against Health Care Practitioners and Providers, as amended, excluding the authorities to issue guidelines or regulations and submit reports to Congress.

This delegation was effective upon date of signature.

Date: March 8, 1988.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 88-5621 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Advisory Committee on Water Data for Public Use; Meeting

Pursuant to Pub. L. 92-463, effective January 5, 1973, notice is hereby given that an open meeting of the Advisory Committee on Water Data for Public Use (ACWDPU) will be held April 12-13, 1988, at the Doubletree Hotel, 300 Canal Street, New Orleans, Louisiana. The ACWDPU consists of individuals and representatives of water resources-oriented groups, including national, State, and regional organizations, professional and technical societies, and the academic community. Its principal responsibility is to represent the interests of the non-Federal community in plans, policies, and procedures related to water data programs. The Director of the U.S. Geological Survey (USGS) is Chairman of the Committee.

The meeting will convene at 8 a.m. on Tuesday, April 12, 1988. The topic of the meeting will be "Water Resources Aspects of Climate Change." The meeting will adjourn at 12 noon on Wednesday, April 13, 1988.

The meeting will be open to the public, and anyone wishing to attend or desiring additional information should contact Nancy Lopez, Chief, Office of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Virginia 22092. Her telephone number is (703) 648-5014. A report summarizing the meeting will be available approximately 4 weeks after the meeting.

Date: March 8, 1988.

Nancy Lopez,

Chief, Office of Water Data Coordination.

[FR Doc. 88-5575 Filed 3-14-88; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5671 and 5672, Blocks 36 and 38, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on March 4, 1988. Comments must be received by March 30, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New

Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

These practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: March 7, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-5641 Filed 3-14-88; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Availability of Proposed Notice of Sale, Western Gulf of Mexico, Oil and Gas Lease Sale 115

The proposed Notice of Sale for Sale 115, Western Gulf of Mexico, may be obtained by written request to the Gulf of Mexico Outer Continental Shelf (OCS) Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for August 1988.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, has provided the affected States the opportunity to review the proposed Notice of Sale.

Comments should be submitted to the Minerals Management Service, 18th and C Streets, NW., Room 4230 (MS-645), Washington DC 20240, no later than 60 days after signature of this Notice.

This Notice of Availability is hereby published pursuant to 30 CFR 256.29, as amended (51 FR 37177 on October 20, 1986), as a matter of information to the public.

William D. Bettenberg,

Director, Minerals Management Service.

Date: March 10, 1988.

[FR Doc. 88-5662 Filed 3-14-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Capital Region; Intent To Spray Insecticide Bacillus Thuringiensis for Control of Gypsy Moth

ACTION: Notice of intent to spray insecticide *Bacillus thuringiensis* for control of gypsy moth.

SUMMARY: This notice announces the National Park Service proposal to apply the insecticide B.T., *Bacillus thuringiensis*, to control gypsy moth in 7 parks in the National Capital Region. B.t. will be applied by helicopter between the last week in April and the second week of May. Treatment Areas include Rock Creek Park (432 acres), Wolf Trap Farm Park (90 acres), George Washington Memorial Parkway (940 acres), Chesapeake and Ohio Canal National Historical Park (395 acres), Manassas National Battlefield (77 acres), Catoctin Mountain Park (2200 acres), and Harpers Ferry National Historical Park (600 acres). The National Park Service is adopting the USDA Forest Service's program of moth suppression with the intent to spray the insecticide *Bacillus thuringiensis* in accordance with their Final Environmental Impact Statement as Supplemented 1985. For information pertaining to the insecticide B.t., its use, and application refer to the USDA Forest Service EIS.

DATES: There will be a 30-day no-action period beginning March 14, 1988, and ending April 12, 1988. Comments will be invited during this time.

ADDRESSES: Comments should be submitted to Manus J. Fish, Jr., Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC, 20242, phone number 202-485-9666.

Date: March 8, 1988.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 88-5566 Filed 3-14-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations; Idaho et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 5, 1988. Pursuant to § 60.13 of 36 CFR Part 60 Written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 30, 1988.

Amy Schlagel,

Acting Chief of Registration, National Register.

IDAHO

Kootenai County

Coeur d'Alene, *Gray, John P. and Stella, House,* 521 S. Thirteenth St.

INDIANA

Carroll County

Rockfield vicinity, *District School No. 3,* NE corner of CR 750 N and CR 100 W

FOUNTAIN County

Covington, *Boggs, J. D. Fine, House,* 719 Liberty St./US 136

MARYLAND

Price George's County

Mitchellville vicinity, *Melford,* 5103 Crain Hwy.

MICHIGAN

Wexford County

Cadillac, *Cobbs, Frank J., House,* 407 E. Chapin St.

MISSISSIPPI

Hancock County

Nugent Site (22HA592)

SJ Mound (22HA594)

Up the Tree Shell Midden (22HA595)

Humphreys County

Belzoni Mound (22HU500)

NEBRASKA

Douglas County

Omaha, *Hill Hotel,* 509 S. Sixteenth St.

NORTH CAROLINA

Wilson County

Wilson, *East Wilson Historic District,* Roughly bounded by E. Gold and Academy Sts., Ward Blvd., Woodard Street Ave. and Elvie St., and Railroad and Pender Sts.

OREGON

Clatsop County

Astoria, *Noonan-Norblad House,* 1625 Grand Ave.

Jackson County

Eagle Point, *Antelope Creek Covered Bridge (Oregon Covered Bridges TR),* Little Butte Creek, E of Main St. Crossing

Marion County

Salem, *Chemeketa Lodge No. 1 Odd Fellows Buildings,* 185–195 High St. NE.

RHODE ISLAND

Bristol County

Portsmouth, *Hog Island Shoal Lighthouse (Lighthouses of Rhode Island TR),* S of Hog Island, E passage, Narragansett Bay

Kent County

Warwick, *Conimicut Lighthouse (Lighthouses of Rhode Island TR),* E of Conimicut Pt. in the Providence River

Warwick, *Warwick Lighthouse (Lighthouses of Rhode Island TR),* 1350 Warwick Neck Ave.

Newport County

Newport, *Castle Hill Lighthosue (Lighthouses of Rhode Island TR),* Off Ocean Ave. on Castle Hill at W end of Newport Neck

Newport, *Newport Harbor Lighthouse (Lighthouses of Rhode Island TR),* N end of Goat Island, Newport Harbor

Portsmouth, *Prudence Island Lighthouse (Lighthouses of Rhode Island TR),* E end of Sandy Pt. on Prudence Island

Washington County

Narragansett, *Point Judith Lighthouse (Lighthouses of Rhode Island TR),* 1470 Ocean Rd.

North Kingston, *Plum Beach Lighthouse (Lighthouses of Rhode Island TR),* Off Plum Beach, W Passage, Narragansett Bay

Tennessee

Williamson County

Allisona, *Wilhoite, James, House (Williamson County MRA),* US Alt. 31

Brentwood vicinity, *Crockett, Samuel, House (Williamson County MRA),* Crockett Rd. and Wilson Pike

Brentwood vicinity, *Holt, Thomas, House (Williamson County MRA),* Crockett Rd. 1 mi. E of Wilson Pike

Brentwood vicinity, *Liberty School (Williamson County MRA),* Liberty Church Rd. ¼ mi. N of Concord Rd.

Brentwood vicinity, *Owen-Cox House (Williamson County MRA),* Moores Ln. 1 mi. E of I-65

Brentwood vicinity, *Owen-Primm House (Williamson County MRA),* Moores Ln. at Wilson Pike

Brentwood vicinity, *Winstead, John M., Houses (Williamson County MRA),* Concord Rd. 1 mi. E of Edmondson Pike

Brentwood, *Crockett, Andrew, House (Williamson County MRA),* 8230 Wikle Ln.

Brentwood, *Elliston, Joseph, House (Williamson County MRA),* Hillsboro Rd./US 431, 1 mi. N of Sneed Rd.

Brentwood, *Frost, John, House (Williamson County MRA),* Old Smyrna Rd. 1½ mi. E of Wilson Pike

Brentwood, *Hadley, Denny P., House (Williamson County MRA),* Off US 31/Franklin Rd. S of Brentwood

Brentwood, *Martin, William, House (Williamson County MRA),* 5215 Seward Rd.

Brentwood, *Sneed, Constantine, House (Williamson County MRA),* 9135 Old Smyrna Rd.

Burwood vicinity, *Pope, John, House (Williamson County MRA),* Pope Chapel Rd.

Burwood, *Huff Store (Williamson County MRA),* Carters Creek Pike

College Grove vicinity, *Allison, William, House (Williamson County MRA),* US Alt. 31, 2 mi. S of College Grove

College Grove vicinity, *Ogilvie, William, House (Williamson County MRA),* W side of US Alt. 31, 1 mi. S of College Grove

College Grove, *Bank of College Grove, The (Williamson County MRA),* US Alt. 31

College Grove, *College Grove Methodist Church (Williamson County MRA),* US Alt. 31

College Grove, *Owen, Dr. Urban, House (Williamson County MRA),* US Alt. 31

Duplex, *Lee, Samuel B., House (Williamson County MRA),* Duplex Rd. ½ mi. W of Lewisburg Pike

Duplex, *Thompson Store (Williamson County MRA),* Duplex Rd. and Lewisburg Pike

Franklin vicinity, *Boyd Mill Ruins (Williamson County MRA),* E bank of the West Harpeth River, ¹⁄₁₀ mi. S of Boxley Valley Rd. and Boyd Mill Pike

Franklin, *Boyd, William, House (Williamson County MRA),* Boyd Mill Pike ¹⁄₁₀ mi. N of Boxley Valley Rd.

Franklin vicinity, *Collins, James E., House (Williamson County MRA),* Hillsboro Rd./US 431, ½ mi. S of Spencer Creek Rd.

Franklin vicinity, *Crafton, John, House (Williamson County MRA),* N. Chapel Rd. 2 mi. E of Arno Rd.

Franklin vicinity, *Davis, Stokely, House (Williamson County MRA),* Old Natchez Trace 1 mi. S of Moran Rd.

Franklin vicinity, *Douglass-Reams House (Williamson County MRA),* Henpeck Ln. ¼ mi. W of Lewisburg Pike

Franklin vicinity, *Forest Hills School (Williamson County MRA),* Carters Creek Pike ²⁄₁₀ mi. S of Bear Creek Rd.

Franklin vicinity, *Gray, Henry P., House (Williamson County MRA),* Old Hillsboro Rd. at Boyd Mill Rd.

Franklin vicinity, *Hardeman, Franklin, House (Williamson County MRA),* Lewisburg Pike 1 mi. S of the Goose Creek Bypass

Franklin vicinity, *Herbert, John, House (Williamson County MRA),* Clovercroft Rd. ¾ mi. E of Wilson Pike

Franklin vicinity, *Hunter, John, House (Williamson County MRA),* Old TN 96 at Carl Rd.

Franklin vicinity, *Johnson, William W., House (Williamson County MRA),* Farm Ln. ½ mi. S of Clovercoft Rd. ½ mi. E of Pleasant Hill Rd.

Franklin vicinity, *King, William, House (Williamson County MRA),* TN 96, 1½ mi. W of US Alt. 41

Franklin vicinity, *Kinnard, Claiborne, House (Williamson County MRA),* Carters Creek Pike ½ mi. N of Bear Creek Rd.

Franklin vicinity, *Knight-Moran House (Williamson County MRA),* Off Old Natchez Trace ¹⁄₁₀ mi. S of Moran Rd.

Franklin vicinity, *Lamb-Stephens House (Williamson County MRA),* Burke Hollow Rd. 1½ mi. E of Wilson Pike

Franklin vicinity, *Leaton, William, House (Williamson County MRA),* Hillsboro Rd./US 431 at Manley Ln.

Franklin vicinity, *Mayberry, H.G.W., House (Williamson County MRA),* Bear Creek Rd ½ mi. W of Carters Creek Pike

Franklin vicinity, *McEwen, Christopher, House (Williamson County MRA),* Franklin Rd. ³⁄₁₀ mi. S of Berrys Chapel Rd.

Franklin vicinity, *McEwen, David, House (Williamson County MRA),* Off the E side of Franklin Rd./US 31, ³⁄₁₀ mi. N of Spencer Creek Rd.

Franklin vicinity, *McGavock-Gaines House (Williamson County MRA),* Caruthers Rd. 1 mi. E of Lewisburg Pike

Franklin vicinity, *McMahan, Daniel, House (Williamson County MRA),* Spencer Creek Rd. ½ mi. W of Franklin Rd.

Franklin vicinity, *Morton, Samuel S., House (Williamson County MRA),* Carters Creek Pike N of Bear Creek Rd.

Franklin vicinity, *Motheral, John, House (Williamson County MRA),* Moran Rd. at Big Harpeth River

Franklin vicinity, *Oden, Dr. Hezekiah, House (Williamson County MRA),* Lewisburg Pike ½ mi. S of Henpeck Ln.

Franklin vicinity, *Old Town (Williamson County MRA),* Old Natchez Trace 1½ mil S of Moran Rd.

Franklin vicinity, *Old Town Bridge (Williamson County MRA),* Over Brown's Creek, W of Old Natchez Trace Rd.

Franklin vicinity, *Perkins, Nicholas Tate, House (Williamson County MRA),* Del Rio Pike ³⁄₁₀ mi. W of Cotton Rd.

Franklin vicinity, *Pollard, George, House (Williamson County MRA),* Wilson Pike 1²⁄₁₀ mi. S of Peytonsville Rd.

Franklin vicinity, *Puryear, Mordecai, House (Williamson County MRA),* Lewisburg Pike ³⁄₁₀ mi. N of Henpeck Ln.

Franklin vicinity, *Rizer, Y.M., House (Williamson County MRA),* Del Rio pike ¾ mi. W of Hillsboro Rd.

Franklin vicinity, *Seward, John, House (Williamson County MRA),* Liberty pike ¾ mi. W of Wilson Pike

Franklin vicinity, *Shute, Thomas, House (Williamson County MRA),* US 31/Franklin Rd. at Spencer Creek Rd.

Franklin vicinity, *Steele, William, House (Williamson County MRA),* Bethesda—Arno Rd. ½ mi. E of Bethesda

Franklin vicinity, *Toon, Beverly, House (Williamson County MRA),* Arno Rd. ½ mi. W of Peytonsville Rd.

Franklin vicinity, *Trinity United Methodist Church (Williamson County MRA)*, Wilson Pile 1½ mi. S of Clovercroft Rd.
Franklin vicinity, *Wilson, Joseph, House (Williamson County MRA)*, Clovercroft Rd. 3/10 mi. W of Wilson Pike
Franklin, *Franklin Historic District (Boundary Increase) (Williamson County MRA)*, Third Ave. S between S. Margin St. and the RR
Franklin, *Glass, Samuel F., House (Williamson County MRA)*, TN 96 at Boyd Mill Pike
Franklin, *Knights of Pythias Pavilion (Williamson County MRA)*, TN 96
Franklin, *Lewisburg Avenue Historic District (Williamson County MRA)*, Roughly bounded by S. Margin St., Lewisburg Ave., and Adams St.
Franklin, *Maney—Sidway House (Williamson County MRA)*, Myles Manor Ct. W of Franklin Rd./US 31
Franklin, *Mayberry, Henry, H. House (Williamson County MRA)*, US 31 just across the Harpeth River N of Franklin
Franklin, *Truett, Alpheus, House (Williamson County MRA)*, US 31/Franklin Rd. 3/10 mi. N of the Franklin Sq.
Franklin, *Vaughn, Andrew C., House (Williamson County MRA)*, 501 Murfreesboro Rd.
Greenbrier vicinity, *Beasley—Parham House (Williamson County MRA)*, Lick Creek Rd. 1 mi. N of Natchez Trace
Kirkland, *Scales, James, House (Williamson County MRA)*, US Alt. 31
Liberty Hill, *Liberty Hill School (Williamson County MRA)*, Crow Cut Rd.
Nolensville vicinity, *Green, Sherwood, House (Williamson County MRA)*, Rocky Ford Rd. ½ mi. E of Nolensville
Nolensville vicinity, *Jordan—Williams House (Williamson County MRA)*, Rocky Ford Rd. 2 mi. E of Nolensville
Nolensville vicinity, *Morton, George W., House (Williamson County MRA)*, US Alt. 41, ½ mi. N of Sunset Rd.
Nolensville, *Bank of Nolensville (Williamson County MRA)*, MS Alt. 41
Peytonsville, Smithson, Nathaniel, House (Williamson County MRA), Peytonsville—Bethesda Rd.
Thompsons Station vicinity, *Buford, Spencer, House (Williamson County MRA)*, US 31, ½ mi. S of Critz Lane
Thompsons Station vicinity, *Critz, Jacob, House (Williamson County MRA)*, Evergreen Rd. 1½ mi. E of Pope Chapel Rd.
Thompsons Station vicinity, *Critz, Thomas L., House (Williamson County MRA)*, Critz Ln. 1 mi. E of Columbia Pike/US 31
Thompsons Station vicinity, *Johnson, James P., House (Williamson County MRA)*, US 31, 3/10 mi. S of W. Harpeth Rd.
Thompsons Station vicinity, *Neely, John, House (Williamson County MRA)*, Sedberry Rd. 2 mi. S of W. Harpeth Rd.
Thompsons Station vicinity, *Pointer, Henry, House (Williamson County MRA)*, US 31 S of Thompsons Station
Thompsons Station, *Giddens, James, House (Williamson County MRA)*, Farm Ln. at N boundary of Thompsons Station
Thompsons Station, *Thompson Station Bank (Williamson County MRA)*, Thompson Station Rd.
Triune vicinity, *Webb, James, House (Williamson County MRA)*, US Alt. 31 at Taliaferro Rd.
Triune vicinity, *Glenn, Abram, House (Williamsòn County MRA)*, McCanless Rd. 1½ mi. E of US Alt. 41
Triune vicinity, *Hyde, Hartwell B., House (Williamson County MRA)*, TN 96, 1 mi. E of TN US Alt. 41
Triune vicinity, *Jordan, Newton, House (Williamson County MRA)*, New Rd. 1 mi. E of US Alt. 41
Triune vicinity, *Russwurm, John S., House (Williamson County MRA)*, Spann Town Rd. ½ mi. E of US Alt. 41
Triune vicinity, *Scales, Joseph, House (Williamson County MRA)*, Off Cox Rd. 1 mi. W of US Alt. 41

[FR Doc. 88-5567 Filed 3-14-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States; 1988 Adverse Effect Wage Rates and Allowable Charges for Meals

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1988.

SUMMARY: The Director, U.S. Employment Service, announces 1988 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H-2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services and logging work may levy upon their workers when they provide three meals per day. AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H-2A) visaholders. AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

Although, because of a recent opinion of the U.S. Court of Appeals for the District of Columbia Circuit, the Department is reviewing its methodology for computing AEWRs, it considers itself compelled to publish these AEWRs at the present time on the basis of the currently applicable methodology.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications. Telephone: 202-535-0163.

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H-2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States, unless the petitioner has applied to the Department of Labor (Department) for an H-2A labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1186.

On May 5, 1987, the Department published a proposed rule to implement the H-2A labor certification program. 52 FR 16770. Written comments were invited through May 19, 1987. The Department published an interim final rule on June 1, 1987, reopening the comment period through July 31, 1987. 20 CFR Part 655, Subpart B; 52 FR 20496. The Department is continuing its review and consideration of the comments it received on the proposed and interim final rules.

The interim final rule requires that covered employers offer and pay their U.S. and H-2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.107(b)(9); 52 FR at 20515. Reference should be made to the interim final rule, which explains in great depth the purpose and history of AEWRs, the Department's discretion in setting AEWRS, and the new AEWR computation methodology at 20 CFR 655.107(a). 52 FR at 20502-20505.

Upon publication of the interim final rule, the AFL-CIO sued the Department, in pertinent part, to invalidate the interim final 20 CFR 655.107(a). On December 22, 1987, the U.S. Court of Appeals for the D.C. Circuit reversed a lower court decision that had invalidated 20 CFR 655.107(a). *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F.2d 912 (D.C. Cir. 1987), *rev'g*, 668 F. Supp. 31 (D.D.C. 1987). Also vacated was that portion of the lower court opinion that stayed the implementation of the June 1, 1987, interim final AEWR methodology in 20 CFR 655.107(a).

However, the D.C. Circuit held that the interim final rule did not contain information sufficient for the court to "discern the reasonableness of the action without further explanation" and remanded the matter "to the Department for a more adequate explanation of its actions * * *."

Since the issuance of the Court of Appeals' decision, the Department of Labor has been engaged in an extensive analysis of the opinion, a review of the rulemaking record and other data, and consultations with other affected agencies of the government. The Department is aware of its obligation to develop a rationale for its current AEWR methodology or a new AEWR methodology as promptly as possible. Nonetheless, this area is extremely complex and involves many competing factors and considerations. Even though the Department is working as quickly as possible to comply with the Court's opinion, it has not been able to complete this complex task as of this time.

Nevertheless, the Department is faced with the responsibility to continue to administer the H–2A program. Inasmuch as the Court of Appeals vacated the District Court injunction of the AEWR computation methodology in 20 CFR 655.107(a), 52 FR 20496, 20515 (June 1, 1987), that methodology remains in effect at the present time. The Department has received H–2A labor certification requests for 1988 and some have been granted for work beginning as early as mid-March and the Department has received requests to publish 1988 AEWRs. The Department believes that the sound administration of the program requires the use of the current Department of Agriculture data as it becomes available. For this reason, the Department is substituting rates based on this new, current data for that used during 1987. Regulations require the Director of the U.S. Employment Service to publish USDA wage data as AEWRs and publish allowable charges logging employers and H–2A agricultural employers may levy upon their workers for the provision of three meals per day. 20 CFR 655.107(a); 20 CFR 655.102(b)(4); 20 CFR 655.111(a); 20 CFR 655.202(b)(4); and 20 CFR 655.211(a). The U.S. Department of Agriculture recently announced its wage data in the publication *Farm Labor*; this data data produces higher AEWRs for the majority of States. The Department recognizes that the rates published in this notice may be affected by the Department's compliance with the Court of Appeal's opinion. In light of the above, the Department believes that sound administration of the H–2A program requires the publication of the 1988 AEWRs at this time.

A. Adverse Effect Wage Rates (AEWRs) for 1988

Adverse effect wage rates are the minimum wage rates which the Department has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. The Department emphasizes, however, that such employers must pay the higher of the AEWR or the applicable prevailing wage as specified in the regulations.

Except as otherwise provided in 20 CFR Part 655, Subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey (USDA does not provide data on Alaska). 20 CFR 655.107(a), 52 FR 20496, 20515 (June 1, 1987).

The regulation at 20 CFR 655.107(a) requires the Director, USES, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1988 AEWRs for work performed on or after the effective dte of this notice, are set forth in the table below:

TABLE—1988 ADVERSE EFFECT WAGE RATES (AEWRS)

State	1988 AEWR
Alabama	$3.88
Arizon	4.30
Arkansas	3.91
California	5.41
Colorado	4.29
Connecticut	4.32
Delaware	4.83
Florida	4.91
Georgia	3.88
Hawaii	7.53
Idaho	3.95
Illinois	4.60
Indiana	4.60
Iowa	4.25
Kansas	4.35
Kentucky	3.90
Louisiana	3.91
Maine	4.32
Maryland	4.83
Massachusetts	4.32
Michigan	4.22
Minnesota	4.22
Mississippi	3.91
Missouri	4.25
Montana	3.95
Nebraska	4.35
Nevada	4.29
New Hampshire	4.32
New Jersey	4.83
New Mexico	4.30
New York	4.32
North Carolina	4.17
North Dakota	4.35
Ohio	4.60
Oklahoma	4.47
Oregon	5.26
Pennsylvania	4.83
Rhode Island	4.32
South Carolina	3.88
South Dakota	4.35
Tennessee	3.90
Texas	4.47
Utah	4.29
Vermont	4.32
Virginia	4.17
Washington	5.26
West Virginia	3.90
Wisconsin	4.22
Wyoming	3.95

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4); 20 CFR 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for such meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) (52 FR 20496, 20514, and 20523 (June 1, 1987)) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) (1987) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the 12-month percent change in the CPI for All Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the 12-month percent change in the CPI-U for Food between December of the year just past and December of the year prior to that.

The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1987 rates for agricultural workers were published in the June 1, 1987 final regulations at 20 CFR 655.102(b)(4) and 655.111(a) (52 FR at 20496 and 20523). The 1987 rates for logging workers were published in a March 27, 1987, **Federal Register** notice at 52 FR 9967.

DOL has determined the percentage change between December of 1986 and December of 1987 for the CPI-U for Food was +3.5%. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1988 are as follows: (1) for 20 CFR 655.102(b)(4) and 20 CFR 655.202(b)(4), the charge, if any, shall be no more than $5.44 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 20 CFR 655.211; (b) for 20 CFR 655.111 and 20 CFR 655.211, the RA may permit an employer to charge workers up to $6.81 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 11th day of March 1988.

Robert A. Schaerfl,

Director, U.S. Employment Service.

[FR Doc. 88-5749 Filed 3-14-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by April 14, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503 (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202 682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection for which approval has expired. Each entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Folk Arts Guidelines FY 1989-90.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state, local, or regional art agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 354.

Estimated Hours for Respondents to Provide Information: 7,080.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-5622 Filed 3-14-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 34—Proposed Rule: "Safety Requirements For Industrial Radiographic Equipment," (§§ 34.20(b)(1) and 34.30).

3. The form number if applicable: Not Applicable.

4. How often the collection is required: The information on labelling is required whenever a radioactive source is replaced in a device, estimated to be every 8 months. The information involving equipment failure problems is required only when such failures occur.

5. Who will be required or asked to report: Industrial radiography licensees.

6. An estimate of the number of responses: Fifty equipment reports annually and 5250 labels annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 1800 hours.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not Applicable.

9. Abstract: 10 CFR Part 34 sets out the information to be provided to the NRC concerning radiographic equipment failure, and the information to be provided on labels attached to the equipment concerning the radioactive source incorporated into the equipment.

Copies of the submittal may be inspected or obtained for a fee from the NRC public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, MD, this 8th day of March 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88-5592 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension
2. The title of the information collection: Class Exemption for Reports Concerning Possible Non-Routine Generic Problems
3. The form number if applicable: Not applicable
4. How often the collection is required: On Occasion
5. Who will be required or asked to report: NRC Licensees/Applicants
6. An estimate of the number of responses: 50
7. An estimate of the total number of hours needed annually to complete the requirement or request: 5,000
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable
9. Abstract: NRC is requesting approval authority to collect information concerning emergency non-routine generic problems which would require prompt action to preclude potential threats to public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395-3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 8th day of March 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88-5593 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 and 50-374]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the license held by Commonwealth Edison Company (CECo, the licensee) for operation of the LaSalle County Station, Units 1 and 2 located in LaSalle County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendments would correct an inconsistency between Technical Specification requirements regarding the suppression pool high level alarm. The following changes to the Technical Specification have been proposed:

1. The suppression poll high water level alarm setpoint in Technical Specification 4.6.2.1.c.1 be raised 1 inch to be consistent with Technical Specification Table 3.3.3-2 and the UFSAR.
2. All references to suppression pool level in the Technical Specifications be amended to be consistent with plant indications.
3. A figure be added to the Technical Specification bases which will correlate plant elevation, suppression chamber levels and suppression pool level indications.

These revisions to the licenses of LaSalle County Station, Units 1 and 2 would be made in response to the licensee's application for amendment dated April 29, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, CECo has proposed amendments to Facility Operating Licenses NPF-11 and NPF-18 which would revise the Technical Specifications to correct an inconsistency in the requirements regarding the suppression pool high level alarm.

On September 14, 1986 it was discovered that an inconsistency existed between the requirements in Technical Specification 4.6.2.1.c.1 and Technical Specification Table 3.3.3-2. Technical Specification 4.6.2.1.c.1 requires a setpoint of less than or equal to 26 feet 8 inches (equivalent to a plant evaluation of 700 feet 0 inches) for the suppression pool high level alarm. Technical Specification Table 3.3.3-2 and the Updated Final Safety Analysis Report (UFSAR) Table 7.3-1, require a trip setpoint of less than or equal to 700 feet 1 inch and an allowable value of less than or equal to 700 feet 2 inches for suppression pool water level—high. Both of these alarm setpoints are below the maximum allowable Suppression Pool level of 26 feet 10 inches indicated in Technical Specification 3.6.2.1.a.1. These amendments will correct the inconsistency regarding the suppression pool high level alarm.

Environmental Impacts of the Proposed Action

By letter dated April 29, 1987, the licensee provided the background and discussion of the inconsistency between Technical Specification requirements regarding the suppression pool high level alarm. The investigation into the cause of the inconsistency concluded that one of the contributing factors was the use of different reference points for the suppression pool high level alarm setpoints identified in the Technical Specifications. That is, the levels were referenced to plant elevation in one case and to the bottom of the suppression chamber in the other. The investigation also found that the reference points used in the Technical Specifications for the Limiting Conditions for Operations and trip setpoints are not consistent with the instrument references used for the control room and local suppression pool level indications. The instrument zero for all plant suppression pool level indications is set at a plant elevation of 699 feet 11 inches.

The Commission has reviewed the April 29, 1987 submittal and finds that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to Operation of LaSalle County Station, Units 1 and 2" dated November 1978, regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. Furthermore, occupational radiological exposure as a result of this action will not be adversely affected. CECo is committed to operate LaSalle County Station in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonable achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated November 1978 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of April 29, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated April 29, 1987 and the Final Environmental Statement for LaSalle County Station dated November 1978 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-5596 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2 and 3; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50-259, 50-260, and 50-296]

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.55a(g)(4) to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Plant, Units 1, 2 and 3, located at the licensee's site near Decatur, Alabama.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of 10 CFR 50.55a(g)(4) to the extent that the 120-month pump and valve program inservice testing (IST) interval would be extended to August 31, 1992 rather than ending on March 1, 1988.

The Need for the Proposed Action

The exemption is needed to permit the Browns Ferry pump and valve program (IST) for all units to be on concurrent inspection intervals as opposed to a separate interval for each unit. In addition, the exemption would permit the 120-month IST interval (based on the 1980 edition of Section XI to the ASME Code through Winter Addenda) to be started on August 31, 1982 since that is the date which the licensee submitted a revised, Code updated IST program.

Environmental Impact of the Proposed Action

The proposed exemption to 10 CFR 50.55a(g)(4) would not impact the ability of the plant to effect safe shutdown and would not permit the IST interval to exceed a 120-month interval without a ASME Code update revision.

In addition, the staff has compared the requirements of the 1980 edition of the Code through the Winter Addenda with the Code requirements which would apply in March 1987 if the exemption were not granted (i.e., the 1983 Edition and Addenda through the Summer 1983 Addenda) and has determined that there is no significant differences in the testing requirements for pumps and valves. Therefore, the proposed exemption would provide an acceptable level of safety, equivalent to that attained by compliance with 10 CFR 50.55a(g)(4). On this basis, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption encompasses features located entirely within the restricted areas as defined in 10 CFR Part 20. Therefore, it does not affect non-radiological environmental impacts associated with the facility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Browns Ferry Nuclear Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepared an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 6, 1983, and supplemented February 17, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Bethesda, Maryland this 8th day of March 1988.

For the Nuclear Regulatory Commission.

Gerald E. Gears,

Acting Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-5597 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket 40-8820]

Finding of No Significant Impact; Renewal of Source Materials License No. SMB-1418; Amax, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Source Materials License No. SMB-1418 for the continued storage of contaminated soil and rubble at the Amax, Inc., site near Parkersburg, West Virginia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow Amax to continue storing contaminated soil and rubble for the next 5 years at their Parkersburg, West Virginia, site.

The Need for the Proposed Action

This license renewal authorizes only the storage of contaminated soil and rubble. Denial of the license renewal for storage would require the transfer of the contaminated soil and rubble to a facility licensed to accept this type of material. At the present time, this is not a viable option.

Environmental Impacts of the Proposed Action

The engineered area containing the contaminated soil and rubble has been stabilized for the past 5 years. During this time, no radioactive material above the specified action levels of 15 pCi/l alpha or 50 pCi/l beta has been observed in any of the four monitoring wells when sampled biannually.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the Environmental Assessment, staff concludes that the proposed action will not have a significant effect on the quality of the human environment. The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relied on the semiannual report of well monitoring performed by the State of West Virginia's Department of Health and Information supplied by Amax letter dated June 15, 1987.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Copies of the Environmental Assessment may be obtained by calling (301) 492-3328 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 7th day of March, 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-5594 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-373]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the license held by Commonwealth Edison Company (CECo, the licensee) for operation of the LaSalle County Station (LCS) Unit 1 located in LaSalle County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would revise Technical Specifications (TS) to incorporate new Cycle 3 reload fuel operating limits, and expand operating domains (including operation with equipment out of service). Proposed TS changes specifically related to the Cycle 3 reload fuel operating limits and analyses include: (a) Revising the maximum allowable Linear Heat Generation Rate (LHGR) to be fuel type specific, and establishing a LHGR limit for the new GE8x8EB reload fuel, (b) adding Maximum Average Planner Linear Heat Generation Rate (MAPLHGR) limit curves for the new reload fuel, (c) deletion of the MAPLHGR reduction factor in Single Loop Operation (SLO), and (d) revising the Minimum Critical Power Ratio (MCPR) limit and associated 20% insertion scram time value. Other TS changes in this amendment that resulted from analyses performed by GE for CECo to expand the unit operating region, and allow for operation with certain equipment out-of-service include the following: (e) Change the analyzed operating region to include extended load line limit (ELLLA), increased core flow (ICF) and feedwater temperature reduction (FTR), (f) revision of the Safety/Relief Valve TS to require the safety function of only 17 of the 18 Safety/Relief values to be operable, (g) revision to the End-of-Cycle Recirculation Pump Trip System TS to allow the system to be inoperable provided the MCPR limit is increased, and (h) revision to the Main Turbine Bypas System TS to allow one bypass valve to be inoperable provided the MCPR limit is increased.

Concurrent with the aforementioned TS changes, several administrative and editorial revisions were proposed for continuity. Furthermore, applicable TS bases and references were updated to reflect new information, fuel type, control rod type analyses, computer models, operating domains, and Limiting Conditions of Operation (LCOs).

These revisions to the license of LCS, Unit 1, would be made in response to the licensee's application for amendment dated January 19, 1988.

The Need for the Propsoed Action

Pursuant to 10 CFR 50.90, CECo has proposed an amendment of Facility Operating License NPF-11, which would revise certain license conditions and TS in order to provide for Cycle 3 operation of LCS Unit 1.

The Unit 1 Reload/2 Cycle 3 replacement reactor fuel is of the GE8x8EB extended burnup fuel design, which has some different mechanical and nuclear features than the Cycle 2 fuel. Although this fuel type has not been employed at LCS before, Reload 2 is still considered a normal reload with no unusual core features or characteristics. The GE8x8EB fuel design described in Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel (GESTAR II), has been reviewed and approved by the NRC for generic applications and extended burnup operations. Utilization of GE8x8EB fuel was recently approved for another CECo plant (Quad Cities) and for other non-CECo plants (e.g., Fitzpatrick, Peach Bottom, Limerick, and Millstone). This license amendment will establish the necessary critical operating limits, defined operating domains, and surveillance requirements to assure safe operation of LCS Unit 1 with the new Cycle 3 reactor core fuel configuration.

Environmental Impacts of the Proposed Action

By letter dated January 19, 1988, the licensee provided transient and accident safety analyses using approved methods to bound all normal and abnormal conditions of Cycle 3 operation for Unit 1.

The licensee's reload submittal analysis was performed by GE using a new and advanced GEMINI licensing methodology to technically justify Cycle 3 operation. This methodology has been previously reviewed and considered acceptable by the NRC staff. Also, included as part of this reload submittal were transient and accident analyses for the following Equipment Out-of-Service and Extended Operating Domain operating modes (EOOS/EOD): ELLLA, ICF, FW heater(s) out-of-service, FTR, End-of-Cycle Recirculation Pump Trip System Out-of-Service (RPTOOS), Main Turbine Bypass System Out-of-Service (MTBOOS), relief valve out-of-service (RVOOS), and SLO. Operation with a safety/relief valve out-of-service over the extended operating domain was demonstrated by performing core wide transients and Emergency Core Cooling System (ECCS) analyses with the most restrictive safety/relief valve out-of-service. This reload package, therefore, incorporates changes to allow operation with safety/relief valve out-of-service.

GE has reanalyzed the design basis Loss of Coolant Accident (LOCA) event at LCS with an improved ECCS computer code package called SAFER/GESTR-LOCA Application Methodology. Results from this analysis of postulated plant LOCAs were provided by CECo in accordance with NRC requirement which demonstrated that LCS conforms with the ECCS and Peak Cladding Temperature (PCT) acceptance criteria of 10 CFR 50.46 and Appendix K. Consequently, SAFER/GESTR-LOCA Loss of Coolant Analysis (NEDC-31510P dated December 1987) is now considered the primary ECCS licensing basis reference for LCS.

The Commission has reviewed these analyses and finds that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to Operation of LaSalle County Station Units 1 and 2" dated November 1978 (NUREG-0486) regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. Furthermore, occupational radiological exposure as a result of reload activities and subsequent plant operations allowed by this action will not differ when compared to previous operating and reload cycles. CECo is committed to operate LCS in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated November 1978 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of January 19, 1988 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated January 19, 1988 and the Final Environmental Statement for LCS dated November 1978, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Rockville, Maryland this 7th day of March 1988.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects — III, IV, V and Special Projects.

[FR Doc. 88-5595 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-29017, License No. 47-17725-02; EA 87-157]

Beckley Appalachian Regional Hospital, Beckley, WV; Order Imposing Civil Monetary Penalty

I

Beckley Appalachian Regional Hospital (licensee) is the holder of Material License No. 47-17725-02 issued by the Nuclear Regulatory Commission (NRC/Commission) on April 7, 1986. The license authorizes the licensee to employ the use of radioactive materials for diagnostic purposes in patients in accordance with the conditions specified therein.

II

A routine unannounced inspection of the licensee's activities was conducted on July 27, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 27, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letters dated November 20 and December 11, 1987. In its response, the licensee denied violations A.2, C, D, and E, admitted the remaining violations, and requested mitigation due to the licensee's financial status and inability to pay.

III

After consideration of the licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order that violations C, D, and E should be withdrawn, that the remaining violations occurred as stated, and that a portion of the civil penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of One Thousand Dollars ($1,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, 101 Marietta Street NW., Suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For The Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operation.

Dated at Bethesda, Maryland this 8th day of March 1988.

Appendix—Evaluation and Conclusion

By a letter dated November 20, 1987, the licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty dated October 27, 1987. In a letter dated December 11, 1987, the licensee restated its reponse to violation A.2. In these responses, the licensee denied four violations and presented corrective actions for one of the denied violations. The licensee also provided financial information and asserted that the licensee was following a prior inspector's instructions on certain procedures. The licensee requests mitigation of the civil penalty based on the inability to pay and the fact that the licensee has spent $5,991 on corrective actions as of December 11, 1987. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

Restatement of Violation A.1

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application date September 19, 1985, and in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 7, Appendix B, of the application requires the Radiation Safety Committee to meet no less than once each calendar quarter.

Contrary to the above, between December 12, 1986 and July 28, 1987, no Radiation Safety Committee meetings were conducted.

This is similar to a violation issued on December 18, 1986.

Licensee's Response

The licensee admitted to the violation but stated that the Nuclear Medicine imaging equipment vendor representative informed them that the Radiation Safety Committee was to meet semi-annually.

NRC Evaluation

In a Notice of Violation dated December 18, 1986, violation A referenced the same licensee conditions as the Notice of Violation of October 27, 1987. Violation A of the Notice dated December 18, 1986, stated that the Radiation Safety Committee is required to meet once each calendar quarter. The licensee's contention that it was misinformed on the required meeting frequency is rejected due to the previous citation of the same violation. In addition, the license requirements clearly specify that such meetings will be held no less than quarterly.

Restatement of Violation A.2

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Item 3.a(3) of the ALARA program requires the Radiation Safety Officer (RSO) to review records of radiation level surveys quarterly.

Contrary to the above, the RSO did not review radiation level survey records between August 14, 1986 and July 27, 1987.

Licensee's Response

In the response dated November 20, 1987, the licensee denied the violation, stating the RSO reviews and intitials the radition level surveys monthly and that the inspector did not review the documents during the July 1987 inspection. In the supplemental response dated December 11, 1987, the licensee withdrew the denial, by implication, and stated appropriate corrective action.

NRC Evaluation

Upon review of the licensee's response, it was evident the licensee was mistaken as to what records the violation referenced. Violations A.5 and B refer to the radiation level surveys also, and the licensee admitted to both of those violations. As evidenced by the citations, the inspector did review the documents and clarified this with the licensee in a telephone conversation on December 2, 1987. The licensee submitted a supplemental response dated December 11, 1987, and stated an appropriate corrective action. In view of these additional clarifications, the violation remains as stated.

Restatement of Violation A.3

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and contained in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 10, Appendix D, Calibration of Dose Calibrator, item B, requires that the licensee use Cobalt-57, Barium-133, and Cesium-137 sources to perform instrument accuracy and constancy tests.

Contrary to the above, as of July 27, 1987, the licensee did not possess and therefore could not use a Barium-133 source to perform instrument accuracy and constancy tests.

This is similar to a violation issued on December 18, 1986.

Licensee's Response

The licensee admitted to the violation but stated the NRC inspector in December 1986 instructed them to obtain Co-57, Co-60, and Cs-137 sources for performing constancy checks on the dose calibrator. The licensee contends they were cited by the inspector in July 1987, for following recommendations given by the previous inspector in December 1986.

The licensee also stated that the violation is not similar to a previous violation, since the constancy checks were being performed, but only lacked the Ba-133 source. The licensee states the Ba-133 source was not used because the previous inspector did not instruct them to use it.

Additionally, the licensee referred to NRC Regulatory Guide 10.8, Revision 2, August 1987, and stated that it does not require the use of a Ba-133 source for the constancy checks.

NRC Evaluation

Licensees frequently request information from inspectors concerning NRC regulatory requirements. NRC inspectors do not give specific instructions for obtaining compliance but occasionally will cite examples of acceptable practices. The responsibility for compliance lies solely with the licensee. To achieve compliance, the licensee must be thoroughly familiar with the pertinent regulations and commitments submitted in its application and additional letters referenced in the license. The inspector who conducted the December 1986 inspection recalls that he provided a copy of the licensee's application and referenced information since the hospital employees could not locate their documents. He also left a copy of NRC Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," which contains various procedures the licensee committed to perform in its application. The inspector recalls that he did review the material with the licensee but did not give specific instructions in achieving compliance. The inspector conducting the inspection of July 1987 states she also left copies of the licensee's application and backup information, as well as NRC Regulatory Guide 10.8, as the licensee employees were again not able to locate the documents. It is apparent the licensee did not thoroughly review the pertinent material left by the inspector in December 1986 to achieve regulatory compliance.

Appendix D, Page 10.8–30, referenced in the license application lists the sources the licensee commited to use for the constancy checks: Co–57, Ba–133, and CA–137. The licensee asserted that this violation was mistakenly referred to as similar to a previous violation. Specifically, violation C of the Notice of Violation dated December 18, 1986, stated that the licensee did not possess the three sealed sources required to perform constancy checks on the dose calibrator and therefore could not perform the constancy checks. Violation A.3 of the Notice dated October 27, 1987, cited the licensee for not possessing the required Ba–133 source for the checks. While the licensee did possess three sealed sources, a Ba–133 source was not among them. Therefore, this is similar to the previous violation, in that all of the required sources were not available.

The licensee response letter also referenced NRC Regulatory Guide 10.8, Revision 2, August 1987. The inspection was conducted on July 27, 1987. Revision 2 had not been issued then and was not operative. The licensee committed to the procedure found in Revision 1, October 1980. Even though Revision 2 had been issued, the licensee was still required to follow Revision 1 unless an amendment to change this part of the license was requested and issued.

Restatement of Violation A.4

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and contained in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 14, Appendix F, item 2.f, of the application requires that a wipe of the external surface of the final source container be made when opening packages containing radioactive material.

Contrary to the above, the licensee did not perform wipe tests of the final source containers on packages received between August 14, 1986 and July 28, 1987.

This is similar to a violation issued on December 18, 1986.

Licensee's Response

The licensee admitted the violation but listed the following three extenuating circumstances concerning the violation. The licensee (1) asserted that it was following the previous inspector's instructions on performing wipe tests on packages containing radioactive material, (2) denied that this violation was similar to a violation cited on December 18, 1986, because the previous inspector's instructions were being followed, and (3) referred to NRC Regulatory Guide 10.8 stating that it does not require wipe tests of the final source containers unless there is a reason to suspect contamination.

NRC Evaluation

The licensee, again, stated that it was following a previous inspector's instructions for performing wipe tests of packages containing radioactive material and also asserted that because of this, violation A.4 was not similar violation. The inspector who conducted the December 1986 inspection recalls that he left copies of the procedures the licensee committed to perform, and briefly reviewed these procedures. He did not offer detailed instructions to the licensee in achieving compliance. The licensee condition cited specifically requires the external surface of the final source container be wipe tested. It is ultimately the licensee's responsibility to be familiar with the commitments made in its application and supporting documents. Additionally, violation F of the Notice of Violation dated December 18, 1986, stated, "licensee representatives stated that packages containing radioactive material routinely received by the Nuclear Medicine Department were not wipe tested as required." Violation A.4 of the Notice dated October 27, 1987, also involves a failure to perform wipe tests of packages received and is therefore considered to be similar.

The licensee's third extenuating circumstance refers to Regulatory Guide Revision 2, August 1987, which was not operative at the time of the July 27, 1987 inspection. In the licensee's application dated September 19, 1985, and in subsequent letters, a commitment was made to follow Appendix F of Regulatory Guide 10.8, Revision 1, October 1980, for opening packages of radioactive material. The licensee must comply with all commitments made in the application dated September 19, 1985, unless an amendment to follow the revised Regulatory Guide is requested and issued.

Restatement of Violation A.5

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and contained in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 17, Appendix I, item 4.b, of the application requires that the method for performing area wipe tests be sufficiently sensitive to detect 200 dpm per 100 cm^2.

Contrary to the above, the licensee used a Capintec Model CRC–7 dose calibrator to analyze the area wipe of approximately 100 cm^2. The Captintec Model CRC–7 dose calibrator has a minimum detectable activity of approximately 22,000 dpm.

Licensee's Response

The licensee admitted the violation but stated an extenuating circumstance. The licensee contended that it was misinformed by the vendor and the previous NRC inspector and that the appropriate equipment was obtained after the July 1987 inspection.

NRC Evaluation

The licensee again asserted that it was misinstructed as to the proper equipment to use for analyzing area wipe tests. As has been stated in the evaluations above, it is the licensee's responsibility to be familiar with the commitments made in the license application and supporting documents and to achieve compliance with requirements. Also, the licensee is responsible for knowing how to perform measurements properly before applying for a license.

Restatement of Violation B

10 CFR 20.401(b) requires the licensee to maintain records of surveys in the same units used in 10 CFR Part 20.

10 CFR 20.5(a) requires that radioactivity be measured in terms of disintegrations per unit time or in curies.

Contrary to the above, between December 4, 1986 and July 28, 1987, the licensee obtained results of area wide surveys in units of millicuries and erroneously recorded them in units of millirem per hour.

Licensee's Response

The licensee admitted the violation and stated extenuating circumstances. The licensee contended that it was misinformed by the vendor and stated that the previous inspector reviewed the technique and unit of measure and approved of both.

NRC Evaluation

The licensee must not depend on an outside consultant or an inspector for basic knowledge of routine instrument use. Each licensee should possess this expertise internally and must take responsibility for achieving regulatory compliance. The inspection process is a sampling review of various conditions and procedures. If an item is not always noted or cited by one inspector, it should not be automatically considered as NRC approved. The inspector conducting the July 1987 inspection noted in a discussion with licensee personnel that the various units of measurement for radioactivity were not well understood. It is also possible that at the time of the December 1986 inspection, the records were maintained properly and that the failure to record the results in millicuries occurred after the inspection.

Restatement of Violation C

10 CFR 20.403(a) requires, in part, that each licensee immediately report any event involving byproduct material possessed by the licensee that may have caused or threatened to cause exposure of the whole body of any individual of 25 rems or more of radiation.

Contrary to the above, a reading of 374 rems to a film badge assigned to an employee was reported to the licensee by the supplier on March 12, 1987. This possible exposure was not officially reported to the NRC immediately, and the NRC was not aware of the badge reading until a July 27, 1987 inspection, at which time the exposure was considered by the licensee to be a photodosimetry error.

Licensee's Response

The licensee contended that the NRC has no regulatory authority over the exposure since the badged employee is the Administrative Technologist for Radiology and does not work with NRC licensed radioactive material. The licensee determined the badge reading was an error. When the vendor reported the badge reading, it was stated that the exposure occurred out of the holder. Based on this fact and on the fact that the Technologist rarely performs diagnostic imaging procedures and never performed Nuclear Medicine Studies during the exposure period, the 374 rem badge reading was determined to be in error and also not reportable under NRC jurisdiction.

NRC Evaluation

The exposure was reported to the NRC on August 14, 1987, by D. Glenn, Ph.D., a Medical Physics Consultant for the licensee. He did so to ensure compliance with all NRC regulations after an Enforcement Conference between the licensee and the NRC on August 12, 1987. A letter dated September 17, 1987, stated the licensee's evaluation of the film badge reading has been reviewed by the NRC. At first, the NRC was concerned that an immediate evaluation was not made and not enough information was known to make a judgement as to the validity or origin of exposure within the reporting deadline. After further discussions with the licensee, the NRC believes that the licensee did perform a prompt evaluation and was justified in not reporting the film badge reading to the NRC. Therefore, violation C will be withdrawn, and our records will be adjusted accordingly.

Restatement of Violation D

10 CFR 20.401(b) requires that each licensee maintain records showing the results of surveys required by 10 CFR 20.201(b). "Survey" as defined in 10 CFR 20.201(a) is an evaluation of the radiation hazards incident to the use of radioactive material.

Contrary to the above, in March 1987, the licensee did not record the results of an evaluation of the circumstances surrounding a reading of 374 rems recorded on the film badge of a radiology technologist.

Licensee's Response

In responding to this violation, the licensee referred to its response to violation C. The licensee denied violation D on both the basis that the badge reading was an error and the basis that the employee did not work with any radioactive material during the film badge exposure period. Therefore, the licensee asserted that the NRC did not have regulatory authority over the incident.

NRC Evaluation

After further clarification of the licensee's evaluation of the high badge reading, the NRC accepts the licensee's position that the employee did not work with NRC licensed radioactive material during the film badge exposure period and calendar quarter in question. Therefore, the NRC regulations are not binding, and no record of the evaluation is required. Violation D will be withdrawn, and our records will be revised accordingly.

Restatement of Violation E

10 CFR 20.401(a) requires that each licensee maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required under 10 CFR 20.202.

Contrary to the above, a film badge exposure of 2380 millirems, which the licensee concluded was not received by the individual to which the badge was assigned, was not removed from the individual's exposure record.

Licensee's Response

The licensee stated that though the individual did not receive the full reported exposure, it should not be entirely removed from her exposure history due to previous quarterly readings of 560 to 830 mrem. The licensee also stated that the Radiation Safety Committee, during the annual review of employee exposures, will make adjustments as necessary at that time, and that the annual review had not been performed at the time of the NRC evaluation of the badge reading.

NRC Evaluation

The NRC accepts the licensee's contention that the film badge records will be properly adjusted at the annual review. It should be noted that the licensee's actions in this situation are viewed as being conservative in evaluating the employee's exposure history. Violation E will be withdrawn, and our records will be revised accordingly.

Licensee's Request for Mitigation of Civil Penalty

In the response dated November 20, 1987, the licensee referenced page 36220 of the September 28, 1987, **Federal**

Register which discusses the NRC's consideration of a licensee's "ability to pay." The licensee also presented financial information about the hospital. In summary, it stated that the hospital operates in the economically devastated Appalachian region and provided $508,145 in charity care for fiscal year 1986–87 and $171,551 in charity care for the first quarter of fiscal year 1987–88. The hospital's operating deficit for fiscal year 1986–87 was $291,453 and for the first quarter of 1987–88 was $258,564.

In the response dated December 11, 1987, the licensee stated that $5,991 had been spent on corrective actions to achieve full regulatory compliance. Based on this information, the licensee has requested mitigation of the proposed civil penalty.

NRC Response

The Federal Register dated September 28, 1987, referenced by the licensee, contains the revised "General Statement of Policy and Procedure for NRC Enforcement Actions" of 10 CFR Part 2, Appendix C. Section V.B addresses civil penalties, which states, "regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis."

In view of the stated NRC policy, the financial information provided by the licensee, and the corrective actions given in the licensee's responses, it has been determined that the proposed civil penalty should be partially mitigated.

Conclusions

After consideration of the responses for November 20, and December 11, 1987, to the Notice of violation and Proposed Imposition of Civil Penalty issued October 27, 1987, the NRC staff has concluded that a sufficient basis was provided for the withdrawal of violations C, D, and E, and that the remaining violations occurred as stated. Additionally, based on the withdrawal of violations C, D, and E, the civil penalty is reduced to $3,500, each violation having been assessed a penalty of $500. Additionally, because of the current financial situation of the licensee, the proposed $5,000 civil penalty has been mitigated to $1,000.

[FR Doc. 88-5598 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company, (the licensee), for operation of Turkey Point Units 3 and 4 located in Dade County, Florida.

The amendments would revise the provisions in the Technical Specifications relating to D.C. power sources to conform more closely to the Standard Technical Specifications. The specific Technical Specifications involved in the proposed amendments relate to surveillance and test requirements for station batteries and battery chargers.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 14, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice 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 would be permitted with particular reference to the following factors: (1) The natue 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 aspects 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 that 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 amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner 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 Herbert N. Berkow: 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 Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esq., Newman and Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, 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 the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes an additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 22, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 2055, and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 10th day of March, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-5599 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-316]

Indiana Michigan Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 100 to Facility Operating License No. DPR-74, issued to Indiana Michigan Power Company (the licensee), which revised the license for operation of the Donald C. Cook Nuclear Plant, Unit No. 2 (the facility), located in Berrien County, Michigan. The amendment is effective as of the date of issuance.

This amendment approves the steam generator repair program for the facility and provides a license condition related to the repair operation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on March 19, 1987 (52 FR 8680). No request for a hearing or petition for leave to intervene was filed following this notice.

Also in connection with this action, the Commission prepared a Notice of Issuance of Environmental Assessment and Finding of No Significant Impact which was published in the Federal Register on December 2, 1987, at 52 FR 45880.

For further details with repect to this action, see (1) the application for amendment dated March 12, 1987, and the licensee's Steam Generator Repair Report submitted by letter dated November 7, 1986, as revised March 30, July 24, October 20 and December 4, 1987, and February 18, 1988, (2) Amendment No. 100 to License No. DPR-74, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 8th day of March 1988.

For The Nuclear Regulatory Commission.

Wayne E. Scott, Jr.,

Acting Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-5600 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-62, License No. R-66 EA 87-155]

University of Virginia, Charlottesville, VA; Order Imposing Civil Monetary Penalty

I

The University of Virginia (licensee) is the holder of Operating License No. R-66 issued by the Nuclear Regulatory Commission (NRC/Commission) on June 24, 1960, and renewed on September 30, 1982. The license authorizes the licensee to possess and operate the reactor as a utilization facility in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities pertaining to the events associated with a significant potential for overexposure of personnel in the neutron radiography facility was conducted on July 6-8, and 15-17, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 26, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 18, 1987. In its response, the licensee denied Violations I.B.2 and I.B.4, admitted the remaining violations, and requested mitigation of the proposed civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that violation I.B.2 should be withdrawn, that the remaining violations occurred as stated in the Notice of Violation, and that a portion of the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated for the reasons stated in the Appendix to the Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C.

2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The licensee pay a civil penalty in the amount of One Thousand Two Hundred Fifty Dollars ($1,250) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty as amended in the attached Appendix, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operation.

Dated at Bethesda, Maryland this 8th day of March 1988.

Appendix—Evaluations and Conclusions

On October 26, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during a routine NRC inspection. The University of Virginia responded to the Notice on November 18, 1987. The licensee denied the occurrence of Violations I.B.2 and I.B.4 and admitted the occurrence of the remaining violations. The licensee also requested full remission or mitigation of the proposed civil penalty amount. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

I. Restatement of Violations I.B.2 and I.B.4

Technical Specification 6.3 requires, in part, that written procedures, reviewed and approved by the Reactor Safety Committee, shall be in effect and followed for: (1) Startup, operation, and shutdown of the reactor; (2) installation and removal of experiments and experimental facilities; (3) periodic surveillance (including test and calibration) of reactor instrumentation and safety systems; and (4) preventive and corrective maintenance operations that could have an effect on reactor safety.

Contrary to the above,

* * * * *

2. Procedures were not adequate, in that, between 1983 and June 1987, the neutron radiography facility was operated without written procedures.

* * * * *

4. Prior to July 2, 1987, written procedures were not in effect for surveillance testing of the neutron detector in the neutron radiography block house access control system.

Summary of Licensee's Response to Violation I.B.2

The licensee admitted to not having written procedures to operate the neutron radiography facility; however, the licensee denied the violation. The licensee contends that the lack of experimental operating procedures for the neutron radiography facility is not a violation of Technical Specification 6.3, in that Technical Specification 6.3 addresses the safe operation of the reactor and does not cover other aspects of the operation of ancillary experimental facilities such as radiological safety.

NRC Evaluation of Licensee Response to Violation I.B.2

NRC agrees that Technical Specification 6.3(2) does not require written operating procedures for experimental facilities. Consequently, this violation has been withdrawn and NRC records will be adjusted accordingly.

Summary of Licensee's Response to Violation I.B.4

The licensee contends that Technical Specification 6.3 does not apply to the instrumentation utilized in experimental facilities, but to reactor instrumentation and safety systems. The licensee states that the boron trifluoride (BF_3) and neutron counter is not intended to be part of the access control system and its function is that of a redundant monitor along with the fluid level indicator to indicate beamport draining. The licensee is of the opinion that written surveillance procedures for the counter are not needed, since its operability is automatically checked with each use of the neutron radiography facility. The licensee also stated that it would strongly consider withdrawing the counter from operation to avoid legal entanglements in the future if the Commission requires surveillance in accordance with written procedures. The licensee stated that an agreement between the licensee and the inspector had been made not to require calibration of the neutron counter.

NRC Evaluation of Licensee Response to Violation I.B.4

Technical Specification 6.3 requires radiation control procedures to be maintained and made available to all operational personnel. The licensee response states that the BF_3 neutron counter was not part of an access control system. The NRC maintains that the licensee was in fact utilizing the BF_3 counter and the light emitting diode (LED) sensor for blockhouse access control. In 1982 modifications were made by the licensee to the reactor shielding in such a manner as to increase the radiation hazard associated with operation of the facility. The licensee installed the two diverse access control instrumentation systems (one of which is the BF_3 neutron counter) thereby restoring the original margin of safety. These systems are required to be periodically tested (although not necessarily "calibrated") for radiation control purposes. Without approved written procedures to ensure operability of these systems, operation of the reactor in its modified configuration is a violation of Technical Specification 6.3.

Additionally, the licensee response implies that an agreement had been made between the inspector and licensee representatives to consider the BF_3 counter as a redundant monitor not requiring calibration. The licensee was told by the inspector that calibration of the neutron counter to read dose rates would not be required; however, periodic surveillances described in licensee procedures would be required to ensure that the monitor was functioning properly.

II. Summary of Licensee's Request for Mitigation

In its response the licensee agrees with the assignment of a Severity Level III for the violations. However, the licensee believes that in view of the opportune discovery of the violations, the immediate reporting of the event to the NRC, the verification of no personnel exposures above NRC limits, and the extensive corrective actions, consideration of mitigation of the proposed fine is justified.

NRC Evaluation of Licensee's Request for Mitigation

The NRC recognizes that the licensee promptly identified and reported the event, but does not consider mitigation warranted in view of the fact that the discovery of the event was fortuitous. However, in consideration of the additional broad scope corrective actions reported in the licensee's November 18, 1987, response and the withdrawal of Violation I.B.2, a sufficient basis is provided for mitigation of the civil penalty by 50 percent to $1,250.

III. NRC Conclusion

The NRC has concluded that violation I.B.2 should be withdrawn and that the remaining violations occurred as stated. In addition, in consideration of the licensee's extensive corrective actions, the civil penalty has been mitigated by 50 percent to $1,250.

[FR Doc. 88-5601 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Adoption of an Official Seal by the Office of Personnel Management

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the authority of Title 5, section 1101, United States Code, as amended by the Civil Service Reform Act of 1978, the OPM is adopting the revised seal as shown below. It is intended that the seal be OPM's official graphic representation for judicial documents, flags, awards or other occurrences that will convey solemnity or historical significance. The revised OPM seal will replace the old seal.

FOR FURTHER INFORMATION CONTACT: Stinson J. Miller, (202) 632-0220.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-5617 Filed 3-14-88; 8:45 am]

BILLING CODE 6325-01-M

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members of the OPM Performance Review Board.

DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Anne A. Andrews, Policy Development Branch, Office of Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 (202) 632-9402.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Constance Horner,

Director.

Members of the OPM Performance Review Board are:

Ann C. Agnew (Chair), Chief of Staff
Mark J. Barnes, Associate Director for Administration
Steven R. Cohen, Regional Director, Chicago Region
Claudia Cooley, Associate Director for Personnel Systems and Oversight
Curtis J. Smith, Associate Director for Career Entry
Jean M. Barber (Alternate Member), Associate Director for Retirement and Insurance

[FR Doc. 88-5551 Filed 3-14-88; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of New System of Records.

SUMMARY: The purpose of this document is to publish advance notice of the creation of a new Privacy Act system of records, USPS 220.020, Express Mail Service Customer List. The system will contain the names and addresses of users of the Postal Service's Express Mail service and will be used to communicate information and updates concerning that service to those users and to provide management with statistical data to analyze usage and improve Express Mail service.

DATE: The proposed action will be effective without further notice on May 14, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Comments may be mailed to the Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, D.C. 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8121.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Postal Service offers to the public an expedited class of mail service known as "Express Mail." The labels, forms, and receipts used in connection with this service are generally filled out by the sender of the Express Mail item. Postal facilities throughout the United States will collect the names and addresses of users of "Express Mail" from these documents for computerized transfer to a central computer site. The collected information wil be used (1) as a mailing list to keep Express Mail users apprised of rate, service and other mailing information, and (2) to produce statistical data without personal identifers for management to use in analyzing usage of and improving "Express Mail" service performance. Access to the central computer file will be restricted to authorized marketing personnel.

Collection of this information should have no adverse effect on any individual's right to privacy. In addition to disclosure restrictions imposed by the Privacy Act, the Postal Service is prohibited from releasing lists of postal customers pursuant to the Postal Reorganization Act (39 USC 412). Further, customers may request at any time that their name and address be removed from the customer list which will be updated at least annually.

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act has been submitted to OMB and Congress, pursuant to paragraph 4b of Appendix I to OMB Circular NO. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Accordingly, the proposed new system description follows:

USPS 220.020

SYSTEM NAME:

Marketing Records—Express Mail Service Customer Mailing List.

SYSTEM LOCATION:

Marketing Department, USPS Headquarters, and its regional, divisional and sectional center marketing components.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Express Mail service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of users of Express Mail service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE:

To communicate information and updates concerning Express Mail service to current users of that service and to provide management with statistical data to analyze usage of and improve Express Mail service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed to the Department of Justice, to other counsel representing the Postal Service or in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or in response to the appropriate agency's request upon a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or processing such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

4. Information from the system may be disclosed to an expert, consultant or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer storage media and hardcopy printouts.

RETRIEVABILITY:

Name of user and ZIP Code.

SAFEGUARDS:

Records are kept in a secured area, with access limited to authorized marketing personnel; access to information in computer files is limited to personnel having an authorized computer password.

RETENTION AND DISPOSAL:

The master computer file is maintained indefinitely and is updated annually. Hardcopy printouts are destroyed when updated printouts are generated.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Marketing Department, Headquarters.

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager and supply their name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Express Main mailing forms and labels, most of which collect information directly from the customer.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-5563 Filed 3-14-88; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Genentech Inc.
Common Stock, Par Value $.02 (File No. 7-3148)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5645 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 9, 1988

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Amre, Inc.
Common Stock, $.01 Par Value (File No. 7-3135)
Cedar Fair L.P.
Depository Receipts, No Par Value (File No. 7-3136)
Nicholas Applegate Growth Fund
Common Stock, $.01 Par Value (File No. 7-3137)
Jepson Corporation
Common Stock, $.01 Par Value (File No. 7-3138)
Meditrust
Shares of Beneficial Interest (File No. 7-3139)
Permian Partners L.P.
Cumulative Convertible Preferred Units No Par Value (File No. 7-3140)
Putnam Premier Income Trust
Common Stock, No Par Value (File No. 7-3141)
Prudential Strategic Income Fund
Common Stock, $.01 Par Value (File No. 7-3142)
Scudder New Asia Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-3143)
Banco de Santander Sociedad
American Depository Receipts (File No. 7-3144)
Thai Fund (The)
Common Stock, $.01 Par Value (File No. 7-3145)
U.S. Surgical Co.
Common Stock, $.01 Par Value (File No. 7-3146)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5646 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 9, 1988

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Alabama Power Company
Depository Preferred, 1/10 Shares, 8.72 Preferred (File No. 7-3127)
Central Jersey Industries
Common Stock, $1.00, Par Value (File No. 7-3128)
Clayton Homes, Inc.
Common Stock, $.10, Par Value (File No. 7-3129)
Oakwood Homes Corporation
Common Stock, $.50, Par Value (File No. 7-3130)
Rockaway Corporation
Common Stock, No Par Value (File No. 7-3131)
Sealed Power Corporation
Common Stock, $.01, Par Value (File No. 7-3132)
Tacoma Boatbuilding Company
Common Stock, $1.00, Par Value (File No. 7-3133)
Tech-Sym Corporation
Common Stock, $.01, Par Value (File No. 7-3134)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5647 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Genentech Inc.
Common Stock, Par Value $.02 (File No. 7-3146)

This security is listed and registered on one or more other national securities exchange and is reported in the consoldiated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5648 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Prudential Strategic Income Fund (The)
Common Stock, $.01 Par Value (File No. 7-3120)

Xerox Corporation
$3.6875 Ten Year Sinking Fund Preferred Stock
$1.00 Par Value (File No. 7-3121)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested pesons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5649 Filed 3-14-88; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-25426; File No. SR-MSRB-87-11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Fair Dealing, Uniform Practice, and Customer Confirmations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has interpreted rule G-17 to require dealers assisting issuers to recommend that issuers clearly state whether the issuer reserves the option to redeem escrowed-to-maturity securities prior to their maturity. In addition, the Board has interpreted its confirmation disclosure rules, rules G-12(c) and G-15 (a), to clarify their application to escrowed-to-maturity securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Traditionally, the term escrowed-to-maturity has meant that such securities are not subject to optional redemption prior to maturity. Investors and market professionals have relied on this understanding in their purchases and sales of such securities. Recently, certain issuers have attempted to call escrowed-to-maturity securities. As a result, investors and market professionals considering transactions in escrowed-to-maturity securities must review the documents for the original issue, for any refunding issues, as well as the escrow agreement and state law, to determine whether any optional redemption provisions apply. In addition, the Board understands that there is uncertainty as to the fair market price of such securities which may cause harm to investors.

On March 17, 1987, the Board sent letters to the Public Securities Association, the Government Finance Officers Association and the National Association of Bond Lawyers expressing its concern. The Board stated that it is essential that issuers, when applicable, expressly note in official statements and defeasance notices relating to escrowed-to-maturity securities whether they have reserved the right to call such securities. It stated that the absence of such express disclosure would raise concerns whether the issuer's disclosure documents adequately explain the material features of the issue and would severely damage investor confidence in the municipal securities market. Although the Board has no rulemaking authority over issuers, it advised brokers, dealers and municipal securities dealers ("dealer") that assist issuers in preparing disclosure documents for escrowed-to-maturity securities to alert these issuers of the need to disclose whether they have reserved the right to call the securities since such information is material to a customer's investment decision about the securities and to the efficient trading of such securities.

In the intervening months since the Board's letter, the Board has continued to receive inquiries from market participants concerning the callability of escrowed-to-maturity securities. Apparently, some dealers now are describing all escrowed-to-maturity securities as callable and there is confusion how to price such securities. In order to avoid confusion with respect to issues that might be escrowed-to-maturity in the future, the Board is interpreting rule G-17, on fair dealing, to require that municipal securities dealers that assist in the preparation of refunding documents as underwriters or financial advisors alert issuers of the materiality of information relating to the callability of escrowed-to-maturity securities. Accordingly, such dealers must recommend that issuers clearly state when the refunded securities will be redeemed and whether the issuer reserves the option to redeem the securities prior to their maturity.

Rules G-12(c)(vi)(E) and G-15(a)(iii)(E) require dealers to disclose on inter-dealer and customer confirmations, respectively, whether the securities are "called" or "prerefunded," the date of maturity which has been fixed by the call notice, and the call price. The Board has stated that this paragraph would require, in the case of escrowed-to-maturity securities, a statement to that effect (which would also meet the requirement to state "the date of maturity which has been fixed") and the amount to be paid at redemption. In addition, rules G–12(c)(v)(E) and G–15(a)(i)(E) require dealers to note on confirmations if securities are subject to redemption prior to maturity (callable).

The Board understands that dealers traditionally have used the term escrowed-to-maturity only for non-callable advance refunded issues the proceeds of which are escrowed to the original maturity date or for escrowed-to-maturity issues with mandatory sinking fund calls. To avoid confusion in the use of the term escrowed-to-maturity, the Board has determined that dealers should use the term escrowed-to-maturity to describe on confirmations only those issues with no optional redemption provisions expressly reserved in escrow and refunding documents. Escrowed-to-maturity issues with no optional or mandatory call features must be described as "escrowed-to-maturity." Escrowed-to-maturity issues subject to mandatory sinking fund calls must be described as "escrowed-to-maturity" and "callable." If an issue is advance refunded to the original maturity date, but the issuer expressly reserves optional redemption features, the security should be described on confirmations as "escrowed (or prerefunded) to [the actual maturity date]" and "callable."

The Board believes that the use of different terminology to describe advance refunded issues expressly subject to optional calls will better alert dealers and customers to this important aspect of certain escrowed issues.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

> designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the meachnism of a free and open market in municipal securites, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by interpretive inquiries.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 8, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5653 Filed 3–14–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25427; File No. SR-NASD-87-31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Inclusion of Put Warrants in the NASDAQ System

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 August 21, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Part II, section 1(c)(7) of Schedule D to the NASD By-Laws to provide for the inclusion of put warrants in the National Association of Securities Dealers Automated Quotations ("NASDAQ") System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently, several member firms have engaged in offerings of put warrants. These instruments grant the holder the right to sell to the issuing company a specified number of shares of the company's common stock, at a specified price, within a specified period of time. A number of companies taking part in the offering of put warrants have requested the inclusion of these instruments in NASDAQ. In the past, the inclusion of a few issues of put warrants in the NASDAQ System has been authorized by the Executive Committee. In each instance, the Executive Committee concluded that the issue of put warrants was sufficiently similar to the warrants already included in the NASDAQ System that it was approprate to grant an exemption to Schedule D.

The NASD believes that other member firms may be planning similar offerings of put warrants and are likely to request the inclusion of these products in the NASDAQ System. In view of the Executive Committee's conclusion that put warrants are sufficiently similar to warrants already included in the NASDAQ System, and in order to avoid the necessity of continuing to review requests seeking exemptive relief from the Executive Committee on an individual basis in the future, the Board of Governors has approved the proposal to amend the provisions of Schedule D to provide for the inclusion of put warrants in the NASDAQ System.

B. Self Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 30 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-87-31 and should be submitted by April 5, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5652 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25428; File No. SR-NASD-87-41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 15, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Article I, Section (c) of the NASD's By-Laws to delete the phrase "located in the United States" from the definition of the term "branch office."

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25322, February 8, 1988) and by publication in the **Federal Register** (53 FR 4254, February 12, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5654 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Genentech Inc.

Common Stock, Par Value $.02 (File No. 7-3147)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5650 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the

Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Placer Dome Inc.
Common Shares, No Par Value (File No. 7–3122)
CalMat Co.
Common Stock, $1.00 Par Value (File No. 7–3123)
Carnival Cruise Lines, Inc.
Class A Common Stock, $0.01 Par Value (File No. 7–3124)
The Germany Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7–3125)
UnionFed Financial Corporation
Common Stock, No Par Value (File No. 7–3126)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5651 Filed 3–14–88; 8:45 am]

BILLING CODE 8010–01–M

PRESIDENTIAL LIFE INSURANCE CO.; APPLICATION FOR EXEMPTION

[Release No. IC–16308; File No. 812–6970]

Date: March 9, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Presidential Life Insurance Company (the "Company"), Presidential Variable Account One (the "Separate Account") and Integrated Resources Capital Services, Inc.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants request an exemption from sections 26(a) and 27(c)(2) of the 1940 Act in connection with the issuance and sale of variable annuity contracts which provide for the assessment of a mortality and expense risk charge.

Filing Date: The application was filed on January 27, 1988 and amended on February 24, 1988.

Hearing or Notification: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on April 4, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Applicant should be served with a copy of the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESS: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Presidential Life Insurance Company, 69 Lydecker Street, Nyack, New York 10960.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (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 at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Company, a stock life insurance company organized under the laws of the state of New York, established the Separate Account on August 26, 1987. The Separate Account is a segregated investment account of the Company and is registered with the SEC as a unit investment trust.

2. The Company proposes to offer individual flexible purchase payment deferred variable annuity contracts (the "Contracts") which are available for both Qualified and Non-Qualified Retirement Plans under the Internal Revenue Code. The purchase payments under the Contracts will be allocated to the Separate Account. The Separate Account is divided into Divisions. Each Division is invested solely in the shares of one of the portfolios of Integrated Resources Series Trust (the "Fund"), a series fund registered under the Act as a diversified open-end management investment company.

3. The Contracts will be distributed through the principal underwriter, Integrated Resources Capital Services, Inc., a wholly-owned subsidiary of Integrated Resources, Inc.

4. The minimum initial purchase payment for Contracts issued pursuant to a Non-Qualified Plan is $1,000 with minimum additional purchase payments of $500. The minimum initial purchase payment for a Contract issued pursuant to a Qualified Plan is $100.

5. Any premium taxes or other taxes payable to a state or other governmental entity will be charged against the Contract Values.

6. The Company will assess an Annual Contract Charge of $30 against each Contract on the anniversary of the Issue Date of the Contract. This charge reimburses the Company for expenses it incurs in establishing and maintaining the Contracts. The amount of this charge is guaranteed and cannot be increased by the Company. This charge is not assessed during the Annuity Period. When the Contract is surrendered for its full surrender value, on other than the anniversary of the Issue Date of the Contract, the full Annual Contract Charge will be deducted at the time of surrender. This charge has been set at a level necessary to recover actual costs and contains no element of profit.

7. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Instead, the Company deducts a contingent deferred sales charge ("withdrawal Charge") upon the withdrawal of a Contract during the Accumulation Period. After the first Contract Year, there is a Free Withdrawal Amount which applies to the first withdrawal during a Contract Year. The Free Withdrawal Amount is equal to ten (10%) percent of the aggregate purchase payments less prior withdrawals. The withdrawal Charge is deducted from remaining Contract Value so that the actual reduction in Contract Value as a result of the withdrawal will be greater than the withdrawal amount paid. The Withdrawal Charge is 6% of the amount withdrawn if such withdrawal is made within six years of making the purchase payment. Withdrawals of purchase payments are deemed to be on a first-in, first-out basis.

8. The Company will deduct an Administrative Expense Charge equal to .15% of the assets of the Separate Account. This charge is designed to

cover the shortfall in revenues from the Annual Contract Charge which are used to reimburse the Company for expenses incurred in the maintenance of the Contracts and the Separate Account.

9. The Company does not intend to profit from the Administrative Expense Charge. Applicants represent that the charge has been set at a level which represents the Company's administrative costs taking into account the Annual Contract Charge. This charge will be reduced to the extent that the amount of this charge is in excess of that necessary to reimburse the Company for its administrative expenses. Should this charge prove to be insufficient, the Company will not increase this charge and will incur the loss. The Administrative Expense Charge is assessed during both the Accumulation Period and the Annuity Period.

10. The Company proposes to assess each Division of the Separate Account with daily charges for mortality and expense risks which amount to an aggregate of 1.25% per annum (consisting of approximately .90% for mortality risks and approximately .35% for expense risks.)

11. The mortality risk assumed by the Company arises from its contractual obligation to make annuity payments after the Annuity Date for the life of the Annuitant, to waive the Withdrawal Charge in the event of the death of the Annuitant and to provide the death benefit prior to the Annuity Date. The expense risk assumed by the Company is that the costs of administering the Contracts and the Separate Account may exceed the amount received from the Annual Contract Charge and the Administrative Expense Charge. If the amount deducted for the Mortality and Expense Risk Charge exceeds the Company's actual costs, the excess will be a profit to the Company. The Company expects a profit from this charge.

12. Applicants represent that the 1.25% total which it proposes to charge for the Mortality and Expense Risk Charge is within the range of industry practice for such charge.

13. Applicants' representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, and the expense risks, taking into account the existence of charges against separate account assets for other than mortality and expense risks and the estimated costs, now and in the future, for certain product features. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail this analysis.

14. Applicants acknowledge that the Withdrawal Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be applied to distribution expenses not reimbursed by the Withdrawal Charge.

15. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the SEC.

16. The Company represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5655 Filed 3–14–88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16307; 812-6907]

GS Mortgage Securities Corp.; Application

March 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of application for amended order of exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: GS Mortgage Securities Corp. ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order amending an existing order (Investment Company Act Release No. 15670, April 8, 1987) ("Existing Order") to exempt Applicant and certain trusts (the "Trust") from all provisions of the 1940 Act in connection with the proposed issuance of collateralized mortgage obligations and sale of beneficial ownership interests in the Trusts.

Filing Dates: The application was filed on October 21, 1987, and amended on January 12, 1988, and March 8, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 30, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Exchange Place, 53 State Street, Boston Massachusetts 02109.

For Further Information Contact: Paul J. Heaney, Financial Analyst (202) 272–2847 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. Applicant is a direct, wholly-owned, limited purpose subsidiary of Goldman, Sachs & Co., a registered broker-dealer and investment adviser. The Existing Order conditionally exempts Applicant and certain Trusts from all provisions of the 1940 Act in connection with the Trusts' issuance of collateralized mortgage obligations ("Bonds") and the Applicant's proposed sale of beneficial ownership interests in such Trusts ("Trust Certificates"). Applicant now seeks to amend the Existing Order to enable Trusts organized by it to (1) issue variable or floating interest rate Bonds which are structured in ways additional to those described in the Existing Order, (2) issue Bonds collateralized by GS Strips and Funding Agreements (each as described below), (3) sell Bonds to foreign investors pursuant to the conditions described in the application, and (4) sell Trust Certificates to sophisticated non-institutional investors.

2. Applicant will form Trusts for the limited purpose of issuing one or more

series (each, a "Series") of Bonds and investing in certain Mortgage Certificates which will be used to collateralize such Bonds. By definition, the "Mortgage Certificates" collateralizing the Bonds will consist of (1) "fully-modified pass-through" mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (3) Guaranteed Mortgage Pass-Through Certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), (4) Stripped Mortgage Backed Securities issued by GNMA, FHLMC or FNMA ("Stripped Mortgage Backed Securities"), and/or (5) Stripped Mortgage Certificates ("GS Strips") issued by a trust organized by Applicant.[1]

3. The Mortgage Certificates securing each Series of Bonds will be either (i) owned by the Trust issuing such Bonds or (ii) owned by homebuilders, thrifts, commercial banks, insurance companies, mortgage bankers and other entities engaged in mortgage finance, including limited purpose financing entities owned by such entities, and pledged to secure such Series of Bonds pursuant to funding agreements ("Funding Agreements").

4. Each Trust will be established under a separate trust agreement ("Trust Agreement") between Applicant, acting as depositor, and an independent bank, trust company or other fiduciary, acting as owner-trustee (the "Owner Trustee"). Each Trust will issue one or more Series of Bonds pursuant to the terms of an indenture ("Indenture") between the Trust and an independent trustee ("Bond Trustee"), as supplemented by one or more supplemental indentures (each, a "Series Supplement"). Each Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

5. In the case of each Series of Bonds: (a) Each Trust will hold no substantial assets other than the Mortgage Certificates (or Funding Agreements); (b) the Bonds will be directly or indirectly (through Funding Agreements) secured by Mortgage Certificates and certain funds, accounts and other collateral (the "Collateral") having a collateral value, determined under the Indenture and the applicable Series Supplement, at the time of issuance of the Bonds and following each payment date, at least equal to the outstanding principal amount of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds, plus, if so specified in the Series Supplement for such Series of Bonds, reinvestment income thereon, together with the other Collateral pledged to secure such Series of Bonds, will be sufficient to pay any interest due on the Bonds of such Series and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned by the Owner Trustee to the Bond Trustee and will be subject to the lien of the related Indenture.

Applicant's Legal Analysis

1. The requested order is necessary and appropriate in the public interest because (a) the Applicant and the Trusts are not the type of entities, and their activities are not the type of activities, intended to be regulated by the 1940 Act; (b) the Applicant and the Trusts may be unable to proceed with their proposed additional activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933 ("1933 Act") and thereafter by the Bond Trustee representing their interests under the Indenture; (d) the Applicant's activities are intended to serve a recognized and critical public need; and (e) the disclosure to the owners of the Trusts and the limitation of the owners of each Trust to no more than 100 sophisticated investors provide safeguards adequate to assure that such potential owners do not require the protection of the 1940 Act.

Applicant's Conditions

Applicant expressly consents to the following conditions with respect to the requested order:

A. Conditions Relating to the Bonds

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration either pursuant to Section 4(2) of the 1933 Act or because such Series of Bonds is offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds sold both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. In addition, the Mortgage Certificates directly or indirectly securing the Bonds will be limited to GNMA Certificates, FHLMC Certificates, FNMA Certificates, Stripped Mortgage Backed Securities issued by GNMA, FHLMC or FNMA, and/or GS Strips, as described herein.

(3) If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged as security for a Series of Bonds, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in conditons A.(2) and A.(4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as security for a Series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New

[1] GS Strips are similar to Stripped Mortgage Backed Securities issued by GNMA, FHLMC and FNMA in that GS Strips are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions and/or interest distributions on the underlying pool of assets, and the fractional interests of each class are not identical but in the aggregate represent 100% of the principal and interest distributions on the particular pool. In addition, each series of GS strips (a) will be rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency, (b) will represent an underlying pool of assets consisting entirely of GNMA Certificates, FHLMC Certificates or FNMA Certificates and (c) will be "mortgage related securities "within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. Use of GS Strips as collateral for Bonds will not reduce the security afforded to Bondholders nor expose them to a level of risk significantly different from that present in a Series of Bonds secured by GNMA, FHLMC or FNMA Certificates, or by Stripped Mortgage Backed Securities.

Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this condition.

(4) All Collateral securing a Series of Bonds will be held by the Bond Trustee, or on behalf of the Bond Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of the Applicant, any Trust, or the Owner Trustee. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with any of the Trusts or the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of each Trust. In addition, as long as any Bonds of a Series are outstanding, on the basis of a review of the Collateral, the independent public accountant will audit the books and records of each Trust and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal of and any interest due on such Series of Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Bond Trustee.

B. Conditions Relating to Floating Rate Bonds

(1) Each class of adjustable, variable or floating interest rate Bonds will have set maximum interest rates (interest rate caps) which may vary from period to period as specified in the related prospectus or other offering document.

(2) The Mortgage Certificates and other Collateral initially pledged to secure a Series of Bonds, including a Series of Bonds containing a class or classes of adjustable, variable or floating rate Bonds, will be sufficient to pay the maximum amount of interest and principal due to such Bonds for the life of such Bonds.

(3) In addition to those mechanisms referred to in the application, Applicant may utilize additional mechanisms to ensure the adequacy of the Collateral notwithstanding the issuance of floating rate Bonds. Applicant will give the Staff of the SEC notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of paragraph B.(2) and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

C. Conditions Relating to REMIC Election

(1) The election by a Trust to treat the arrangement by which any Series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. If such an election is made, the Trust that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a matter satisfactory to the agency or agencies rating the Bonds. Each Trust that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses in connection with the issuance of the Bonds and the administration of the Trust by one or more of the methods described in the application for the Existing Order.

(2) Each Trust will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by such Trust to provide for the payments of such fees and expenses.

D. Conditions Relating to the Sale of Trust Certificates

(1) Applicant will sell Trust Certificates only in such Trusts which issue a Series of bonds collateralized by GNMA, FNMA and FHLMC Certificates, including Stripped Mortgage Backed Securities, or GS Strips, or Funding Agreements secured by such certificates. Trust Certificates will be offered and sold only to no more than 100 (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Trust Certificates and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 of such Trust Certificates and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risk of purchasing a Trust Certificate and will have direct, personal and significant experience in making investments in mortgage related securities. Owners of Trust Certificates will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employees benefit plans, insurance companies, real estate investment Trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage related securities.

(2) Each sale of a Trust Certificate will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(3) Each sale of a Trust Certificate will prohibit the transfer of such Trust Certificate if there would be more than 100 beneficial owners of Trust Certificates of any Trust at any time.

(4) Each sale of a Trust Certificate will require each purchaser thereof to represent that it is not purchasing for distribution and that it will hold such Trust Certificate in its own name or for accounts as to which it exercises sole investment discretion.

(5) Each sale of a Trust Certificate will provide that (i) no owner of such Trust Certificate may be affiliated with the Board Trustee and (ii) no holder of a Trust Certificate may be affiliated with either the custodian of the Mortgage Certificates or the agency rating the Bonds of the relevant Series.

(6) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either (a) any custodian which may hold the Mortgage Certificates on behalf of the Board Trustee or (b) any statistical rating agency rating the Bonds.

(7) If any shares of the common stock of the Applicant were to be sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of the Applicant, the relief afforded by an order granted on the application would not apply to subsequent Bond offerings by the Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5582 Filed 3–14–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1174]

U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 6, 1988 at 9:30 a.m. in Room 856, Federal Communications Commission, 1919 M St. NW., Washington, DC.

Study Group B deals with the Preparatory Committee for World Administrative Telegraph and Telephone Conference (PC/WATTC). The Preparatory Committee has finished its work.

The purpose of the meeting will be to report on the work of the Ad hoc group which has been meeting to review U.S. position for the WATTC meeting itself, prior to the appointment of a head of that delegation.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102.

Date: March 2, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 88–5576 Filed 3–14–88; 8:45 am]

BILLING CODE 4710-07-M

Office of the Secretary

[Public Notice 1054]

Delegation of Authority 145-6: Order Amending State Department Delegation of Authority No. 145

By virtue of the authority vested in the Secretary of State by section 4 of the Act of May 26, 1949 (22 U.S.C. 2685), I hereby direct that State Department Delegation of Authority No. 145, as amended, be further amended by deleting the word "and" the second time it appears in section 1(a)(3)(A) and by inserting after subparagraph (B) of that section a new subparagraph (C) to read as follows:

, and (C) Section 1454 of the Department of Defense Authorization Act, 1986 (P.L. 99-145, 10 U.S.C. 2547), and (to the extent not otherwise expressly delegated or reserved) other authorities and responsibilities of the Secretary of State relating to the provision of Department of Defense equipment or services for humanitarian purposes.

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

Dated: February 23, 1988.

John C. Whitehead,

Acting Secretary of State.

[FR Doc. 88–5579 Filed 3–14–88; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1056]

Fishermen's Protective Act Procedures; Fee

AGENCY: Department of State.

ACTION: Notice of change of due date for second installment of fees for the agreement year from October 1, 1987 through September 30, 1988.

SUMMARY: Section 7 of the Fishermen's Protective Act of 1967, as amended, requires fees from participating vessel owners for deposit into the Fishermen's Guaranty Fund. These fees fund a program which compensates fishing vessel owners for certain losses they have incurred when vessels have been seized by foreign nations. 52 FR 43145 established the fee for the present agreement year (October 1, 1987, through September 30, 1988) at $22 per gross vessel ton, optionally payable in two equal installments, the first due no later than November 15, 1987, and the second due no later than March 15, 1988. This notice changes the date on which the second payment is due to June 1, 1988.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Stetson Tinkham, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520, telephone number (202) 647-2009.

SUPPLEMENTARY INFORMATION: The Fishermen's Guaranty Fund, under section 7 of the Fishermen's Protective Act (22 U.S.C. 1971–1980), (the "Act"), compensates U.S. fishing vessel owners, who have entered into guaranty agreements, for certain losses caused by a foreign country's seizure or detention of a U.S. fishing vessel based on claims to jurisdiction not recognized by the United States or exercised in a manner inconsistent with international law as recognized by the United States. Pre-existing agreements are required. A fee of $22 per gross vessel ton was established for the present agreement year (October 1, 1987 through September 30, 1988) and appeared in 52 FR 43145. Moving the due date for the second installment of fee payments for the 1988 fiscal year from March 15 to June 1, 1988, will reduce financial burden on fishermen who also have substantial insurance premiums due in March.

Classification

This action is taken under the authority of 22 U.S.C. 1977, complies with Executive Order 12291, and is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requirement, as defined in the Paperwork Reduction Act.

As a "matter relating to Agency * * * contracts," this rule is exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act is not required.

For the Secretary of State.

Date: March 7, 1988.

Richard J. Smith,

Acting Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 88–5577 Filed 3–14–88; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-11]

Tuna Fish-Tariff-Rate Quota; Calendar Year 1988

AGENCY: U.S. Customs Service, Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 1988.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, TSUS, is based on the United States pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1988 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Karen L. Cooper, Chief, Quota Branch, Quota and Quality Assurance Division, Office of Trade Operations, U.S. Customs Service, Washington, DC 20229, (202/566-8592).

It has not been determined that 85,185,252 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1988, at the rate of 6 percent ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 112.34 TSUS.

Dated: March 8, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 88-5664 Filed 3-14-88; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

State Government and Congressional Information Systems: A Program for Central American Parliamentarians and Political Leaders

The Office of Private Sector Programs will assist in supporting an exchange that will bring twelve parliamentarians and young political party representatives from six Central American countries to the United States to provide them with an overview of the American legislative process and to enhance the technical and research skills of the specialized support staffs of the legislative assemblies in these countries. The participants will be selected by USIA representatives abroad. The project, scheduled for June 1988, will be conceived and executed by a U.S. not-for-project institution with expertise in State Government and Congressional information systems. The program design will include a state assembly orientation program to observe state legislative processes, information systems, and research support; a comparison of state and federal government in the U.S.; and presentations and meetings in Washington, DC, on library and information retrieval systems, research support groups, and the basic process of making legislation.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully developed and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-5578 Filed 3-14-88; 8:45 am]

BILLING CODE 8230-01-M

Educational Exchanges With the Soviet Union Application for Fiscal Year 1988

USIA invites applications from U.S. educational, cultural and other not-for-profit institutions to conduct exchanges of students and young people with the Soviet Union, in conformity with recent legislation (Pub. L. 100-204, section 301B) pursuant to the General Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Contacts, Exchanges and Cooperation in the Scientific, Technical, Educational, Cultural and Other Fields (November, 1985).

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world."

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for educational and cultural exchanges of students and young people between the U.S. and the USSR through a wide variety of substantive bilateral activities. USIA seeks to encourage participation of a broad range of sectors, institutions, and geographic areas in the U.S. and the USSR. Support will be available for projects of up to two-years' duration. Preference will be given to projects that expand the range of existing U.S.-Soviet exchanges (by scope, field of focus or institutional base), although support for ongoing activities will not be excluded.

Support is offered for two categories of exchange programs. Category A supports exchanges of young people between the ages of 15 and 25. Category B supports student or student-related exchanges at the undergraduate or graduate level. Both existing and new projects are eligible.

Applications must be received by USIA no later than 5:00 p.m. EDT on Monday, May 2, 1988.

Category A: Youth Exchange

Grant funding for projects submitted under this category is intended to encourage primarily two-way exchanges of young people between the ages of 15 and 25. Participants must be either U.S. or Soviet citizens.

Organizations must document one or more of the following qualifications: (1)

Three years or more of experience in conducting youth exchanges; (2) three years or more of experience in sponsoring substantive activities for young people; (3) experience conducting youth or adult exchanges with the Soviet Union; (4) experience programming foreign students or visitors in the U.S. Additionally, organizations should be able to demonstrate an adequate resource base for conducting programming in more than one location, if the project requires it. Organizations seeking funds for a high-school study program must be designated by USIA under the "Criteria for Teenager Exchange Visitor Programs."

Preference is given for project activities that exhibit the following features:

—Thematic focus—The substantive portion of the program should have a specific focus. Eligible foci may include, but are not limited to: The arts (theater, dance, music, literature, fine arts and film/video); language and culture; conservation and the environment; historic preservation; political, social and economic issues; and agriculture (rural or farm-based exchanges). All projects must demonstrate a balance of views in the presentation of the central theme. The balance of substantive programming and other activities will be carefully reviewed for contribution to project goals. For-credit post-secondary study and sports exchanges are not eligible for support.
—Extensive interaction between American and Soviet youth—Activities should be carefully programmed to provide substantial interaction between the two societies, *e.g.*, homestays, joint seminars, and summer enrichment programs in both countries.
—Orientation programs—All participants should be provided an orientation which introduces the program theme, administrative issues, and substantive issues likely to be raised by their U.S. or Soviet counterparts.
—Minimum stay of four weeks—USIA has a preference for programs in which the duration of stay in country is longer than four weeks. Consideration will be given to those projects which, for reasons of Soviet requirements, are shorter, but under no circumstances will a proposal be reviewed if the length of stay in country is less than three weeks.
—Language qualifications—Language capability is desirable, but not required. However, some participants in each incoming delegation should be conversant in English; some participants in each outgoing delegation should be conversant in Russian and other relevant Soviet languages.
—Adequate lead time to ensure a successful exchange—Projects should include adequate planning time. For those projects involving exchanges to occur after October 1, 1988, the application must demonstrate to the Agency's satisfaction the need to secure commitments or to undertake advance planning before October 1.

Allowable costs for Category A projects: Project awards will be made in a wide range of amounts but will not normally exceed $50,000. The primary objective of grant funding is to expand or enhance exchange programs along the lines described above. Therefore, grant-funded items of expenditure will generally be limited to the following categories:

—In-country travel and per diem.
—Orientation or preparation costs; briefing materials.
—Speaker honoraria (not to exceed $150 per day per speaker).
—Cultural allowances (not to exceed $150 per participant).
—Admission fees, camping fees, conference/registration fees.
—International travel, normally limited to partial support for outgoing Americans.
—Up to 20% of costs requested of USIA may be allotted to administrative costs.

It is expected that applications will demonstrate substantial cost sharing.

Category B: Academic Exchange

Grant funding under this category is intended to enhance and expand the scope of U.S.-USSR student and student-related exchanges in ways that complement existing exchange programs between the two countries. Applications for substantive academic exchange activities will be accepted from accredited, degree-granting U.S. universities or colleges and from not-for-profit organizations engaged in international educational exchange at the undergraduate or graduate level. Participants must be either U.S. or Soviet citizens.

Preference will be given to proposals that represent new approaches to exchange with the Soviet Union, introduce contact with Soviet government ministries and educational and cultural institutions beyond those typically involved in exchanges to date, including institutions below the ministerial level, or involve placement of American students in geographic areas of the USSR outside Moscow and Leningrad. Preference will be given to proposals for exchanges primarily in the arts, humanities, and social sciences.

Language qualifications: Students should have sufficient fluency in the language of the country to be visited to pursue university studies in that language and to converse with citizens of the country without the aid of interpreters.

Allowable costs for Category B projects: The anticipated maximum level of grants is $75,000. Grant-funded items of expenditure will be limited to the following categories:

—In-country travel and per diem.
—Orientation or preparation costs; briefing materials.
—Speaker honoraria (not to exceed $150 per day per speaker).
—Cultural allowances (not to exceed $150 per participant).
—Academic program fees.
—International travel, normally limited to partial support for outgoing Americans.
—Up to 20% of costs requested of USIA may be allotted to administrative costs.

It is expected that applications will demonstrate substantial cost sharing, including tuition waivers where applicable.

Requirements for Application (Both Categories)

1. *Eligibility:* In cases where an application is being submitted on behalf of a U.S. and a Soviet institution, applications must be submitted by the U.S. partner.

2. *Application procedures:* Applicants must submit one original and eleven (11) complete copies of their proposals to:

For Category A proposals:

U.S.-Soviet Exchanges Program, Youth Exchange Staff, E/YX, Room 357, United States Information Agency, 301 4th St. SW., Washington, DC 20547.

For Category B proposals:

U.S.-Soviet Exchanges Program, European Exchanges Branch, Office of Academic Programs, E/AEE, Room 208, United States Information Agency, 301 4th St. SW., Washington, DC 20547.

In order to be eligible for review, the proposal must include:

(1) *Summary document:* A typed, double-spaced abstract of approximately two pages;

(2) *Narrative:* Total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions, with a copy of the charter and list of Board of Directors of the U.S. institution; information on the applicant's prior experience with Soviet exchanges, if any, including details on numbers and length of exchanges in each direction; and a description of the institution's resources that would support the movement of participants from one location to another (if proposed) during the course of the project. Institutions seeking support from USIA for the first time, or those whose experience in the field of exchanges proposed for support is of less than four-years' duration, should state this fact.

N.B. Organizations with less than four years' experience with exchanges are limited by USIA grant guidelines to grants of $60,000.

b. A detailed description of the proposed exchange, including but not limited to: A statement of specific project goals, with reference to ways in which the proposed exchange can contribute to overall U.S.-USSR understanding; name and qualifications, including language skills, of project director and senior project personnel; general description of potential participants and their qualifications, including language skills; a detailed, specific description of program activities, including when and where they will occur, and a justification for each proposed activity in terms of the project's overall goals. Proposals must include a timetable for project activities. Proposals for ongoing activities shuld identify ways in which the original scope of the exchange will be broadened or enriched as a result of the USIA grant. Each proposal must also include a plan for institutional evaluation of the exchange activity. *N.B.: All projects must document active planning with Soviet counterpart institutions before October 1, 1988.*

(3) *A detailed, three-column budget* outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. institutions.

Required format for budget: All proposed expenditures should be individually listed, using the format below. Each request for travel should specify the number of round trips by number of participants per fiscal year. Each maintenance request should specify number of participants and rate. For per diem, the request should specify rate times number of participants times number of days. Breakdowns for each category should be provided, direct and administrative costs absorbed by each institution should be specified along with absorbed salary and benefits, under the U.S. and Soviet institutions columns.

	USIA	US Inst.	Soviet Inst.[1]
Year 1:			
International travel			
Domestic travel			
Maintenance and per diem costs[2]			
Salary and benefits[3]			
Academic program costs			
Orientation costs			
Enrichment programs			
Cultural allowances			
Year 2:			
(Repeat above categories for year 2)			

[1] Assignment of exact dollar or ruble costs may not be possible. In such cases, please provide specific descriptions of activities to be supported by the Soviet side.

[2] Per diem rates may not exceed the maximum set by the U.S. Department of State for overseas locations and the General Services Administration for U.S. localities.

[3] Participating institutions are expected to continue full salary and benefits for staff responsible for organizing and managing the exchange.

No dependents' costs are allowable.

(4) *Appendices* should be kept to a minimum but must include:

a. Bio-sketches of professional accomplishments of the principal project staff, not to exceed two pages in length each, clearly indicating the level of language skills, overseas experience, including experience in the USSR, and other evidence of familiarity with the USSR, experience related to youth or academic exchange, as appropriate, relevant publications and research activities, and citizenship. Bio-sketches for the U.S. project staff must be included; those of non-U.S. staff are desirable but not required.

b. Documentation of institutional support for the proposed exchange program, *including a signed letter of endorsement from the U.S. institution's president, vice-president, chancellor or provost.* Proposals should also provide evidence (if possible, in the form of signed letters from or agreements with heads of universities or other organizations) that designated Soviet institutions are prepared to participate in and support the exchange described in the proposal. General agreements signed or under negotiation with the intended partner institution would also be evidence of Soviet interest and should be cited.

3. *Review process:* USIA will acknowledge all proposals and will send cover sheets and other forms for completion and return to the Agency to applicants whose proposals have arrived complete and within deadline. Technically eligible proposals will be forwarded to committees of USIA officers for review in conformity with the guidelines and criteria set forth herein. All proposals will be reviewed by the Agency's Office of General Counsel. Category B proposals will also be submitted to the Board of Foreign Scholarships.

Complete applications in both categories consistent with the above guidelines will be reviewed according to the following criteria:

a. Soundness of proposal, *e.g.*, as reflected in focused goals, selection of activities, and consistency with Agency program purposes.

b. Feasibility of the program plan.

c. Applicants' experience relevant to program goals.

d. Language capability or program participants as defined above.

e. Multiplier effect. The effects of the exchanges should extend beyond the immediate participants.

f. Contribution to expanding the range of U.S.-USSR exchanges. if the proposal is for support for an established activity, it should provide evidence that USIA support would enhance the exchange relationship.

g. Cost of effectiveness. USIA encourages cost-sharing.

4. *Deadline:* Complete proposal packages must be received by USIA on or before May 2, 1988, 5:00 p.m. EDT. Applicants are responsible for the submission of complete applications. All required items must be received in one package by deadline.

5. *Notification:* All applicants will be notified of the results of the review process on or about July 15, 1988. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

Category A: Janet Garvey, Youth Exchange Staff (202)485-7299.

Category B: William Dickson, Academic Exchanges Division, Europe Branch (202) 485-1509.

Dated: March 9, 1988.

Mark Blitz,

Associate Director.

[FR Doc. 88-5589 Filed 3-14-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 8, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Medicine and Surgery
2. Application for Furnishing Nursing Home Care to Beneficiaries of the Veterans Administration
3. VA Form 10–1170
4. The information allows the VA medical center staff to determine if the facility (respondent) is, in fact, a nursing home and if the staff of the nursing home appears to meet 42 CFR standards
5. Non-recurring
6. Businesses or other for-profit, Small businesses or organizations, Non-profit institutions
7. 400 responses
8. 133 hours
9. Not applicable

[FR Doc. 88–5559 Filed 3–14–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 10, 1988.

TIME AND DATE: 10:00 a.m., Thursday, March 17, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Ronnie Beavers, et al. and UMWA v. Kitt Energy Corp.*, Docket No. WEVA 85-73-D. (Issues include whether the judge erred in holding that Kitt Energy discriminated against the complainants in violation of Section 105(c) of the Mine Act.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88-5728 Filed 3-11-88; 3:21 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 21, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement of the Board's organization and procedures and delegation of administrative responsibility and authority. (This item was originally announced for a closed meeting on March 14, 1988.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 11, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-5733 Filed 3-11-88; 3:43 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 14, 21, 28, and April 4, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 14

Monday, March 14

2:00 p.m.
Briefing on the Status of Efforts to Develop a De Minimis Policy (Public Meeting)

Thursday, March 17

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood-2 (Public Meeting)

2:00 p.m.
Briefing on Status of TMI-2 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Sequoyah Restart (Tentative) (Postponed from March 10)

Friday, March 18

10:00 a.m.
NRC Participation in International Agreements and Research Programs (Public Meeting)

Week of March 21—Tentative

Monday, March 21

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting)

Tuesday, March 22

10:00 a.m.
Discussion/Possible Vote on Rancho Seco (Public Meeting)

2:00 p.m.
Briefing on Status of Proposed Rulemaking on Basic QA in Radiation Therapy and Related Activities (Public Meeting)

Thursday, March 24

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 28—Tentative

Thursday, March 31

10:00 a.m.
Briefing on Proposed Final Rule on Station Blackout (Public Meeting)

2:00 p.m.
Briefing on High Priority AEOD Issues (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

Week of April 4—Tentative

Thursday, April 7

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Pending Investigations (Closed—Ex. 2, 5, & 7) was held on March 1.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill (202) 634-1410.

William M. Hill, Jr.,
Office of the Secretary.

March 10, 1988.

[FR Doc. 88-5643 Filed 3-10-88; 4:39 pm]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on March 8, 1988, the Board of Governors of the United States Postal Service voted unanimously to close to public observation a meeting scheduled for March 22, 1988, in Washington, DC. The members will consider the Postal Rate Commission's recommended decision in Docket No. R87-1.

The meeting is expected to be attended in person or by telephone by the following: Governors Griesemer, Hall, McConnell, Nevin, Peters, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code. The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5; section 410(c)(4) of Title 39, United States Code; and § 7.3(c), (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-5693 Filed 3-11-88; 10:48 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-63-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

Correction

In notice document 88-4913 appearing on page 7230 in the issue of Monday, March 7, 1988, the docket number was omitted. It should read as it appears in the headings above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Correction

In notice document 88-4391 appearing on page 6205 in the issue of Tuesday, March 1, 1988, make the following correction:

In the first column, in the first paragraph, the date in the last two lines should read, "March 18, 1988".

BILLING CODE 1505-01-D

Tuesday
March 15, 1988

Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 225 and 325

Risk-Based Capital; Notice of Proposed Guidelines

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 88-5]

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0628]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital; Risk-Based Capital Guidelines

AGENCIES: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation.

ACTION: Notice of proposed guidelines.

SUMMARY: Since the early 1980s, the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("Office" or "OCC") (collectively, "the Federal banking agencies" or "Agencies") have employed minimum supervisory ratios of primary and total capital to total assets in assessing the capital adequacy of national and state-chartered banks and bank holding companies (collectively, "banking organizations").

While these ratios of capital to total assets have served as a useful tool for assessing capital adequacy, the Federal banking agencies believe that there is a need for a measure that is more sensitive to the risk profiles of individual banking organizations. As a result, the Federal banking agencies first proposed in early 1986 the adoption of a risk-based capital measure that took explicit account of broad differences in risks among a banking organization's assets and off-balance sheet items. Based, in part, on comments received in response to that earlier proposal, the Federal banking agencies, in conjunction with the Bank of England, published a revised risk-based capital proposal in early 1987, which would have established risk-based capital standards applicable to banking organizations in the United States and the United Kingdom ("U.S./U.K. proposal" or "measure"). Implementation of the U.S./U.K. proposal was deferred to enlist the participation of additional countries in the risk-based capital agreement.

The Federal banking agencies are now seeking public comment on a revised risk-based capital proposal in lieu of the U.S./U.K. measure. The current proposal is based upon a risk-based capital framework developed jointly during the past year by supervisory authorities from 12 major industrial countries. Adoption of this proposal would achieve important goals long sought by the Agencies. First, it would establish a uniform risk-based capital framework, applicable to all federally-supervised banking organizations, that is more sensitive to credit risk factors, including off-balance sheet exposures. Second, it would encourage international banking organizations to strengthen their capital positions. Finally, it would mitigate a source of competitive inequality arising from differences in national supervisory requirements.

This proposal represents a major step in the process of coordinating with regulatory authorities of other countries to establish appropriate capital standards for banking organizations, in accordance with the International Lending Supervision Act of 1983 ("ILSA"), 12 U.S.C. 3901 *et seq.*

DATE: Comments must be submitted on or before May 13, 1988.

ADDRESSES: Comments should be sent to the appropriate Federal banking agency at the following addresses:

OCC: Comments should be sent to Docket No. 88-5, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Attention: Lynette Carter. Telephone (202) 447-1800. Comments will be available for inspection and photocopying at the same address.

Board: Comments should refer to Docket No. R-0628, and should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2223, Eccles Building, 20th and Constitution Avenue NW., between the hours of 9:00 a.m. and 5:00 p.m. weekdays. Comments may be inspected in Room 1119, Eccles Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FDIC: Comments should be sent to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Ed Irmler, Associate Director, Economic and Policy Analysis Division, (202/447-1924); Larry Senter, National Bank Examiner, Commercial Activities Division, (202/447-1164); C. Stewart Goddin, Senior International Economic Advisor, Multinational and Regional Bank Division, (202/447-1747); Sanford Brown, Attorney, Legal Advisory Services Division, (202/447-1880), Office of Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

Board: Richard Spillenkothen, Deputy Associate Director (202/452-2594), Anthony G. Cornyn, Assistant Director (202/452-3354), Stephen M. Lovette, Manager (202/452-3622), Rhoger Pugh, Manager 202/728-5883), Norah Barger, Financial Analyst (202/452-2402), or Kelly S. Shaw, Financial Analyst (202/452-3054), Division of Banking Supervision and Regulation, Board of Governors., or J. Virgil Mattingly, Deputy General Counsel (202/452-3430), or Michael J. O'Rourke, Senior Attorney (202/452-3288), Legal Division, Board of Governors; or Andrew Spindler, Vice President (212/720-5846), Betsy B. White, Vice President (212/720-5874), Donald E. Schmid, Manager (212/720-6611), or Jeffrey Bardos, Bank Supervision Specialist (212/720-7962), Federal Reserve Bank of New York. For the hearing impaired *only*, Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

FDIC: Stephen G. Pfeifer, Examination Specialist (202/898-6894) or Robert F. Miailovich, Associate Director (202/898-6918) Division of Bank Supervision; or Claude A. Rollin, Attorney, Legal Division (202/898-3985), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

I. Supplementary Information and Background

The Purpose of the Risk-Based Capital Proposal

In 1986, the Federal banking agencies issued for public comment a risk-based capital proposal applicable to U.S. banks and bank holding companies. The principal objectives of this early proposal, as well as subsequent proposals, were: (1) To develop more systematic procedures for factoring on- and off-balance sheet risks into supervisory assessments of capital adequacy; and (2) to foster coordination among supervisory authorities from major industrial countries, many of which employ risk-sensitive capital measures.

The risk-based capital proposal was consistent with one of the major goals of the International Lending Supervision

Act of 1983, which was to strengthen the bank regulatory framework by encouraging greater coordination among regulatory authorities in different countries. In addition to enhancing the Federal banking agencies' authority to establish and enforce minimum levels of capital for U.S. banking organizations, this Act instructed the Federal banking agencies to work with governments, central banks, and regulatory authorities of other major countries to maintain and, where necessary, strengthen the capital positions of banking institutions involved in international lending.

In 1987, the Federal banking agencies, in conjunction with the Bank of England, issued a revised risk-based capital proposal ("U.S./U.K. proposal" or "measure") that would apply to U.S. and U.K. banking organizations.[1] Like the 1986 proposal, a principal objective of the U.S./U.K. measure was to promote the convergence of supervisory policies on capital adequacy assessments among countries with major banking centers. In issuing the proposal, U.S. and U.K. supervisory authorities expressed the hope that it would provide a reasonable basis for working with other countries to achieve a more consistent international framework for assessing capital adequacy.

The Federal banking agencies deferred action on the U.S./U.K. proposal in order to participate in the development of a more broadly-based capital framework that would be applicable to international banking organizations from the major industrial countries. The revised capital proposal described in this Notice of Proposed Guidelines is based upon a risk-based capital framework ("Basle capital framework") developed by the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Supervisors' Committee").[2] Officials from each of the Federal banking agencies are members of the Basle Supervisors' Committee and have played an active role in the development of the Basle capital framework.[3] This framework was endorsed by the Group of Ten central bank governors and recommended to each of the countries represented on the Basle Supervisors' Committee as a basis for seeking comment on a risk-based capital adequacy measure applicable to international banking organizations in the major industrial countries.

The risk-based capital guidelines described in sections II through V of this joint Notice constitute a proposal for applying the Basle capital framework to U.S. banking organizations. The text of each Federal banking agency's proposed guidelines is attached to this Notice. The guidelines for national banks were developed by the OCC, the guidelines for state-chartered non-member banks by the FDIC, and the guidelines for state member banks and bank holding companies by the Federal Reserve. The Federal banking agencies are seeking comment on these risk-based capital guidelines which supersede the U.S./U.K. proposal.

The current proposal achieves the principal objectives the Agencies have sought in connection with their previous proposals. In particular, the proposal establishes a systematic analytical framework that: (1) Makes regulatory capital requirements more sensitive to differences in risk profiles among banking organizations; (2) takes off-balance sheet exposures into explicit account in assessing capital adequacy; and (3) minimizes disincentives to holding liquid, low-risk assets.

The development of a risk-based framework in conjunction with supervisory officials from other industrial countries acknowledges the growing internationalization of major banking and financial markets throughout the world. The harmonization and strengthening of capital standards worldwide should contribute to a more stable and resilient international banking system and help mitigate a source of competitive inequality for international banks stemming from differences in national supervisory requirements.

In addition to international banks, the Federal banking agencies are proposing to extend the application of the risk-based capital framework to all other U.S. banking organizations, regardless of size. Although the Agencies recognize the need to minimize the additional reporting and bookkeeping burden that the risk-based capital framework may impose on small banks, the underlying rationale behind the use of a risk-based capital approach applies to small domestic banking institutions as well as large international banking organizations.

This proposal consists of a definition of capital, a system for assigning assets and off-balance sheet items to risk categories, and a schedule for establishing minimum supervisory standards. The current proposal also provides for transitional arrangements and a phase-in period to facilitate adoption and implementation of the measure. Each of these areas is described in greater detail in sections II through V below. Following is a brief overview of the Basle capital framework and a discussion of how the proposal, as it applies to U.S. banking organizations, relates to previous proposals.

Overview of the Basle Capital Framework

The framework, as already noted, comprises four broad aspects:

(1) A common international definition of core or Tier 1 capital (consisting of common stockholders' equity), and a "menu" of internationally-accepted non-common equity items for supplementing core capital (supplementary or Tier 2 capital components). The proposal affords national supervisors a degree of latitude, within prescribed parameters, for determining which supplementary components will qualify as capital.

(2) A general framework for assigning assets and off-balance sheet items to five broad risk categories (0, 10, 20, 50 and 100 percent) and procedures for calculating a risk-based capital ratio.

(3) A schedule for achieving a minimum risk-based capital ratio by the end of 1990 of 7.25 percent, (of which at least 3.25 percentage points should be in the form of common stockholders' equity) and, by the end of 1992, 8.0 percent (of which at least 4.0 percentage points should be in the form of common stockholders' equity).

(4) Transitional arrangements and a phase-in period (running through the end of 1992) permitting banking organizations to include some supplementary items in core capital on a temporary basis and providing time to bring their capital positions into full conformity with the risk-based capital definitions and minimum supervisory standards.

In setting out a system for measuring and assessing capital adequacy, the Basle capital framework does not mandate a completely uniform structure to be employed by all countries. Rather, the framework attempts to recognize and accommodate, within prescribed limits, unique features of individual

[1] On March 18, 1987, the Board, together with the Bank of England, also issued a proposal to incorporate counterparty credit risks stemming from interest rate and foreign exchange rate contracts into the proposed U.S./U.K. risk-based capital measure.

[2] The Basle Supervisors' Committee consists of representatives of the central banks and supervisory authorities from the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, United Kingdom, United States), Switzerland, and Luxembourg.

[3] The Basle capital framework is described in a consultative paper prepared by the Basle Supervisors' Committee and issued jointly by the Federal banking agencies on December 10, 1987. A copy of the paper and the joint press release are available upon request from the Federal banking agencies.

countries arising from differences in basic accounting procedures, in the structure and evolution of banking and financial markets, and in fundamental supervisory methodologies and techniques. While not eliminating these differences, the Basle capital framework nonetheless represents a significant step toward the adoption of more consistent international procedures for measuring and evaluating capital adequacy in relation to a broadly-accepted international norm.

The Basle capital framework focuses principally on broad categories of credit risk, although it does provide latitude to national supervisory authorities to take into account interest rate risk associated with certain assets in assigning them to risk categories. The measure does not, however, take account of other factors that can affect an organization's financial condition, such as overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control other financial and operating risks. A final assessment of capital adequacy must take account of each of these considerations, including, in particular, the level and severity of problem and classified assets. Thus, the risk-based capital ratio is but one element in the assessment of capital adequacy, and the final supervisory judgment on an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

The definitions and provisions of the Basle capital framework, including the definitions of supplementary capital components, the provisions for assigning assets to risk categories, and the interim and final ratio standards, would establish *minimum* supervisory guidelines and standards. Supervisory authorities in each country would be responsible for determining how the risk-based framework would apply to organizations in that country, including whether considerations of safety and soundness or other factors, such as national accounting procedures, justify departures from the Basle framework. Such departures could involve the establishment of definitional guidelines or capital standards that are higher or more restrictive than those incorporated in the proposed Basle capital framework.

Relationship of the Current Proposal to the Previous Proposal

The current risk-based capital measure, based upon the Basle capital framework, is similar to the previous U.S./U.K. proposal in a number of respects.

First, the general nature and construction of the current proposal broadly parallel the U.S./U.K. measure. The current proposal takes the form of supervisory guidelines rather than a formal regulation. Under the current proposal, an organization's risk-based capital ratio would continue to be determined by dividing its capital base by the sum of its weighted risk assets. The proposal defines capital to include core components, generally on an unlimited basis, and other supplementary elements, subject to certain prudential limitations. Weighted risk assets are determined by assigning assets and credit equivalent amounts of off-balance sheet items to one of five risk categories (0, 10, 20, 50 and 100 percent, based primarily upon broad judgments of relative credit risk. (An illustration of how the proposed ratio would be calculated is contained in Table I.)

Second, with the exception of some important, differences noted below, the general treatment accorded many assets and off-balance sheet items in the current proposal is broadly similar to that of the U.S./U.K. proposal. As under that earlier proposal, all short-term claims on banks, both foreign and domestic, would be given identical low-risk treatment in recognition of the role of interbank funding markets as an important source of liquidity. With respect to sovereign transfer risk, the proposal generally opts for limiting low-risk treatment to domestic central governments. Claims by U.S. banking organizations on any foreign government involving an element of transfer risk, without distinguishing among countries, would be placed in the standard (100 percent) risk category.

Third, like the U.S./U.K. measure, this proposal also recognizes that the calculation of a risk-based capital ratio is but one step in the evaluation of an organization's overall capital adequacy. Many other factors and risk considerations must be taken into account before a final judgment on an organization's capital adequacy can be rendered. In this regard, the current risk-based capital proposal provides that, initially, the Federal banking agencies will continue to utilize their existing ratios of primary and total capital to total assets (leverage ratios).

Fourth, as was contemplated but not specified in the U.S./U.K. measure, the current proposal establishes a schedule for achieving a minimum ratio of capital (as defined in the proposal) to weighted risk assets. Banking organizations, under the revised proposal, would generally be encouraged to operate above the minimum risk-based ratio.

Fifth, the Federal banking agencies intend to apply the proposed minimum risk-based capital measure to all banking organizations that they supervise.[4] As discussed in greater detail in Section V below, however, initial implementation efforts would generally be directed toward large international organizations. Moreover, steps would be taken to minimize any additional reporting or recordkeeping burden associated with adoption of the risk-based capital standard, especially for smaller institutions.

Sixth, the revised proposal incorporates explicit procedures for factoring off-balance sheet risks into the risk-based capital framework. As in the U.S./U.K. proposal, the current proposal first applies credit conversion factors to the face value, or notional principal, amounts of off-balance sheet exposures and then assigns the resulting credit equivalent amounts to the appropriate risk category in a manner generally similar to balance sheet assets. With respect to the treatment of counterparty credit risks associated with interest rate and foreign exchange rate contracts, the current proposal (as it applies to U.S. banking organizations) adopts a simplified version of the approach taken in the U.S./U.K. proposal.

The current risk-based capital proposal differs in some respects from the U.S./U.K. measure, as well as from existing capital policies. These differences have resulted primarily from further consideration of key issues in light of discussions with banking supervisors in other countries and comments received in response to earlier risk-based capital proposals. Following is a brief review of the principal differences between the current risk-based capital proposal and the earlier U.S./U.K. measure.

First, while the current proposal, like the U.S./U.K. measure, defines the capital structure to comprise two basic components (core and supplementary

[4] The risk-based capital guidelines would apply to bank holding companies with less than $150 million in consolidated assets on a *bank-only* basis unless: (1) The holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or (2) the holding company or any nonbank subsidiary has outstanding debt held by the general public.

capital), the current proposal provides that, after the transition period, core capital is to be comprised solely of common stockholders' equity (including retained earnings) and minority interest in the common equity accounts of consolidated subsidiaries.[5] This is in contrast to the Federal banking agencies' present definition of primary capital which includes both common and perpetual preferred stock, the allowance for loan and lease losses, and mandatory convertible debt instruments. The current proposal also differs from the U.S./U.K. proposal which included the allowance for loan and lease losses (general loan loss reserves in the U.K.) in base capital along with common stockholders' equity.

The requirement that core capital (Tier 1) should ultimately be made up exclusively of common stockholders' equity is not meant to suggest that other elements of capital, such as perpetual preferred stock, mandatory convertible securities, the allowance for loan and lease losses, and subordinated debt do not impart important strengths to an organization's capital position. Indeed, these items continue to be included in capital, under appropriate conditions, within the supplementary components. Rather, the predominant role afforded common stockholders' equity reflects the fact that this element provides maximum strength and flexibility to a banking organization experiencing losses or other financial pressures. For this reason, international supervisors reached a consensus that a minimum level of common stockholders' equity should serve as the foundation of a bank's capital base.

A second difference relates to the treatment of the allowance for loan and lease losses as a component of capital. The Basle framework assigns general loan loss reserves—defined, as reserves not attributed to, or earmarked for, specific assets and not representing a reduction in the value of particular assets—to supplementary elements of capital (Tier 2). It also phases in a limitation on valuation reserves [6] (that is, loan loss reserves that represent valuation adjustments for groups of assets or latent but unidentified losses inherent in the balance sheet). After the transition period, these reserves, as an element of capital, may constitute no more than 1.25 percent of weighted risk assets within the supplementary components.

In practice, it is very difficult to distinguish between the portion of loan loss reserves that is freely available to absorb future losses within the portfolio and the portion that, in reality, may reflect present or imminent losses, perhaps in amounts as yet unquantified, on existing problem or troubled loans. Thus, the Federal banking agencies propose to limit the inclusion of the allowance for loan and lease losses, as an element of capital, to no more than 1.25 percent of weighted risk assets within the supplementary components.[7]

This limitation represents an effort to balance the present supervisory policy of including the allowance for loan losses in regulatory capital with the need to minimize the possibility that reserves reflecting a high level of problem loans will play a prominent role in an organization's capital base. The effect of the limitation is to bring the proportion of regulatory capital that may consist of the allowance for loan losses more broadly into line with the percentage role it played in bank capital generally in the years prior to 1987. The Federal banking agencies will continue to work together, and with banking authorities in other countries, to ensure over time that only reserves that are freely available to absorb future losses qualify for inclusion in regulatory capital.

A third major difference from the U.S./U.K. proposal relates to the treatment of certain intangible assets. While the current risk-based proposal, like the U.S./U.K. measure, provides for the deduction of goodwill from capital,[8] other identifiable intangible assets, such as purchased mortgage servicing rights, would not necessarily be deducted in calculating the risk-based capital ratio. Rather, these identifiable intangibles would be treated in accordance with each Federal banking agency's policies and practices as set forth in their respective proposed guidelines.[9]

Fourth, another significant change in the current proposal is the role for straight term subordinated debt, which was not included in the U.S./U.K. capital definition and which plays only a very limited role in the Federal banking agencies' current definition of total capital. Subordinated debt at the bank level helps to protect both depositors and the Federal deposit insurance fund. At the holding company level, subordinated debt provides a cushion to senior creditors, thereby tending to promote funding stability. Issuance of subordinated debt in prudent amounts can also enhance the role of market forces in disciplining the affairs of banking organizations. Under the current risk-based proposal, term subordinated debt, together with intermediate-term limited-life preferred stock, may be included in supplementary capital up to an amount equal to 50 percent of core capital.

Fifth, the risk-weighting framework of the revised proposal, as applied to U.S. banking organizations, provides for a number of changes from the U.S./U.K. proposal. In particular, under the revised proposal, the major changes include:

—Securities issued by the U.S. Government or its Agencies (defined as agencies whose obligations are explicitly guaranteed by the U.S. Government) with *remaining* maturities of 91 days or less will be assigned to the zero percent risk category, rather than to the 10 percent category.

—All other U.S. Government and Agency obligations will be assigned to the 10 percent risk category, rather than assigning securities with maturities of under one year to the 10 percent category and securities with maturities of over one year to the next higher risk category. (Portions of loans and other assets guaranteed by the U.S. Government or its Agencies, or portions of loans collateralized by cash or U.S. Government or Agency debt, will also be assigned to the 10 percent risk category).

—The weight of the category for short-term interbank claims has been reduced from 25 to 20 percent, reducing, at the same time, the risk weight for other assets assigned to this category. In addition, this

[5] During the transition period, as described in greater detail in Section V below, non-common equity components may be included in core capital under certain conditions that call for their phaseout into supplementary capital over time.

[6] Both the U.S./U.K. measure and the Basle capital framework exclude from capital allocated reserves representing identified losses on specific assets.

[7] Consistent with the Basle capital framework, the Federal banking agencies are also proposing an interim limitation on the allowance for loan losses in capital. By the end of 1990, the allowance for loan losses, as an element of capital, would be limited to 1.5 percent of weighted risk assets within Tier 2. No limit is being proposed on the role of loan loss reserves in capital for the initial phase of the transition period.

[8] Each of the Federal banking agencies may "grandfather" goodwill in certain institutions under their individual jurisdiction in accordance with terms and conditions spelled out in their respective proposed guidelines.

[9] Under current regulatory policy, the Federal Reserve generally evaluates identifiable intangible assets on a case-by-case basis and makes appropriate adjustments when the level or recorded value of these intangibles is inconsistent with the organization's overall financial condition. The only form of identifiable intangible assets currently permitted for state non-member and national banks by the FDIC and OCC, respectively, are purchased mortgage servicing rights, with other intangibles considered for inclusion only on a case-by-case basis.

category also now includes long-term claims on domestic, but not foreign, depository institutions.

—The risk weight for securities issued by U.S. Government-*sponsored* Agencies (defined as agencies established by the U.S. Congress to serve public purposes and whose debt obligations are *not explicitly guaranteed* by the U.S. Government) and general obligations of U.S. local governments (defined as debt explicitly backed by the full faith and credit of the taxing authority of U.S. states, counties, or municipalities) has been reduced from 50 percent to 20 percent.

—The effective risk weight for short-term commitments has been reduced to 0 percent, and unused retail credit card lines unconditionally cancellable by the bank at any time have been defined to be short-term commitments.

—The credit conversion factor for short-term, self-liquidating trade-related contingencies, such as commercial letters of credit, has been reduced from 50 percent to 20 percent.

—Portions of assets guaranteed by, or backed by the full faith and credit of, domestic depository institutions will be assigned to the risk category of the guarantor (20 percent).

—The procedures for determining capital requirements for interest rate swaps and foreign exchange contracts have been simplified and the capital requirements have been reduced.

—The assignment of claims on foreign banks to risk categories is based upon original rather than remaining maturity. (In addition, like the U.S./U.K. proposal, the assignment of commitments to risk categories is also based upon original maturity.)

In general, most of the changes made to the proposed risk asset framework result in lower effective risk weightings. These changes were made in light of public comments received on previous proposals and to facilitate international convergence by bringing the Federal banking agencies' risk-based capital proposal into alignment with the Basle capital framework.

Finally, the current proposal sets an explicit schedule for achieving a minimum level of capital to weighted risk assets by the end of the transition period. The proposal establishes an interim target risk-based ratio by the end of 1990 of 7.25 percent (of which 3.25 percentage points must be in the form of common stockholders' equity) and a minimum standard by the end of 1992 of 8 percent (of which at least one-half, or 4 percentage points, must be in the form of common stockholders' equity). While the current proposal establishes no initial standard, banking organizations with ratios below the interim and final supervisory minimums are generally expected to avoid further reductions in their capital positions and should adopt plans and take steps to bring their capital positions into compliance with the risk-based minimums as soon as reasonably possible.

II. Proposed Definition of Capital

In accordance with the Basle capital framework, the Federal banking agencies propose a risk-based capital ratio that relates an institution's qualifying capital base (the numerator of the ratio) to its weighted risk assets (the denominator). An institution's qualifying capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). These capital elements and the various limits, restrictions, and deductions to which they are subject are discussed below.

The Components of Qualifying Capital

1. Core Capital Elements (Tier 1)

Core capital elements consist of:

—Common stockholders' equity (common stockholders' equity includes common stock, surplus, and retained earnings, including disclosed capital reserves that represent an appropriation of retained earnings);

—Minority interest in the common stockholders' equity accounts of consolidated subsidiaries; and,

—Supplementary capital elements (during a transitional period only and subject to limitations set forth below in Section V under "Transition and Implementing Arrangements").

At least 50 percent of the total qualifying capital base (Tier 1 plus Tier 2) of a banking organization must consist of core capital (Tier 1). Core capital is defined as the sum of core capital elements minus goodwill and other disallowed intangible assets. A detailed discussion of each Agency's treatment of goodwill and other intangibles is contained in the respective Agency's proposed risk-based capital guidelines. Arrangements for calculating the risk-based capital ratio during the transitional period are discussed in Section V below.

2. Supplementary Capital Elements (Tier 2)

A portion of an institution's qualifying capital base may consist of supplementary capital elements. Supplementary capital elements include:

—Allowance for loan and lease losses (subject to limitations discussed below);

—Perpetual and long-term preferred stock (original maturity of at least 20 years);

—Hybrid capital instruments, including perpetual debt and mandatory convertible securities; and,

—Subordinated debt and intermediate-term preferred stock (original average maturity of seven years or more).

The maximum amount of supplementary components that may be treated as capital for regulatory purposes would be limited to 100 percent of core capital. In addition, the combined amount of subordinated debt and intermediate-term preferred stock that may be treated as capital for regulatory purposes would be limited to 50 percent of core capital. Amounts in excess of these limits may, of course, be issued and, while not included in the ratio calculation, would be taken into account in the overall assessment of an organization's funding and capital adequacy.

The Basle capital framework also provides for the inclusion of "revaluation reserves" as an element of supplementary capital at the discretion of national supervisory authorities.[10] These items, as well as the other components of supplementary capital, are discussed in greater detail below.

Allowance for loan and lease losses. Allowances for loan and lease losses that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables are included within the meaning of general reserves, which the Basle capital framework assigns to Tier 2. Allowances for loan and lease losses exclude "allocated transfer risk reserves." Allocated transfer risk reserves are reserves that have been established in accordance with section

[10] The Basle capital framework also provides for the inclusion of "undisclosed reserves" in Tier 2. As defined in the Basle Agreement, undisclosed reserves represent accumulated after-tax retained earnings that are not disclosed on the balance sheet of a bank. Apart from the fact that these reserves are not disclosed publicly, they are essentially of the same quality and character as retained earnings, and, to be included in capital, such reserves must be accepted by the banking organization's home supervisor. Although such undisclosed reserves are common in some countries, under generally accepted accounting principles and long-standing supervisory practice, these types of reserves are not recognized for banks and bank holding companies in the United States. Foreign banking organizations seeking to make acquisitions or conduct business in the United States would be expected to disclose publicly at least the degree of reliance on such reserves in meeting supervisory capital requirements.

905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems. Allowances for loan and lease losses also exclude reserves against identified losses or earmarked for a specified asset.

As noted above, it is not always possible to distinguish clearly between loan loss reserves that are freely available to absorb future losses within the portfolio and the portion that, in reality, may reflect present or imminent losses on existing problem or troubled loans. For this reason, the Federal banking agencies, consistent with the Basle capital framework, propose a phasedown during the transition period of the extent to which allowances for loan and lease losses may be included in an institution's capital base. Initially no limit will apply to these allowances. However, at the end of 1990, allowances for loan and lease losses, as a component of capital, may constitute no more than 1.5 percent of weighted risk assets and, at the end of 1992 and thereafter, no more than 1.25 percent of risk weighted assets.

Perpetual and long-term referred stock. Perpetual preferred stock is defined as preferred stock without a fixed maturity date *and* that cannot be redeemed at the option of the holder. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more. These preferred stock instruments would qualify for inclusion in capital provided that they can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer preferred dividends if dividends on common stock are eliminated. Given these conditions and the perpetual or long-term nature of the instruments, there is no limit on the amount of these instruments that may be included within Tier 2 capital.

Hybrid capital instruments. Hybrid capital instruments include long-term debt instruments that generally meet the requirements set forth below:

(1) The instrument must be unsecured; fully paid-up; and subordinated to general creditors and, if issued by a bank, also to depositors.

(2) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the banking organization's primary Federal regulator.

(3) The instrument must be available to participate in losses while the issuer is operating as a going concern. (Straight term subordinated debt would not meet this requirement). To satisfy this requirement, the instrument must convert to common stock or perpetual or long-term preferred stock in the event that the sum of the retained earnings and capital surplus accounts of the issuer shows a negative balance.

(4) The instrument must provide the option for the issuer to defer interest payments if: (a) The issuer does not report a profit in the preceding annual period (defined as combined profits for the most recent four quarters) *and* (b) the issuer eliminates cash dividends on common and preferred stock. (This provision is intended to provide the issuer with the option of mitigating the burden associated with interest payments during a period of severe financial stress.)

In addition to hybrid capital instruments meeting the above conditions, mandatory convertible securities that meet the current criteria for such instruments specified by the banking organization's primary Federal regulatory authority [11] or that have been previously approved as capital would also be treated as qualifying hybrid capital instruments under the proposal. During the transition period, the Federal banking agencies will review the criteria for mandatory convertible securities in light of the definitions contained in the Basle capital framework. As a result of this review, the agencies may modify the mandatory convertible criteria as part of their overall effort to implement the risk-based capital framework.

There is no limit on the amount of hybrid capital instruments and mandatory convertible securities that may be included within Tier 2 capital.

Subordinated debt and intermediate-term preferred stock. The aggregate amount of subordinated debt and intermediate-term preferred stock that may be treated as capital for risk-based capital purposes is limited to 50 percent of core capital. Subordinated debt and intermediate-term preferred stock must have an original average maturity of at least seven years to qualify as supplementary capital.[12] In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by the Federal Deposit Insurance Corporation. To qualify as capital in banks, debt must be subordinated to depositors and general creditors; in bank holding companies, debt must be subordinated in right of payment to all senior indebtedness of the issuer.

Discount of supplementary capital instruments. As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation and becomes less like a component of capital. For this reason, the outstanding amount of term subordinated debt and long- and intermediate-term limited-life preferred stock eligible for inclusion in Tier 2 would be adjusted downward, or discounted, as it approaches maturity. All such instruments would be discounted by reducing the outstanding amount of the capital instrument that would count as supplementary capital by a fifth of the original amount (less redemptions) each year during the instrument's last five years before maturity. Such instruments, therefore, would have no capital value when they have a maturity of less than a year.

Revaluation reserves. Revaluation reserves include "formal revaluation reserves" and "latent revaluation reserves." Formal revaluation reserves are created through a formal adjustment, or restatement, of the amount at which fixed assets are recorded on the balance sheet to reflect a change in the market value of the assets. Such reserves are recognized as capital in some countries, notably Great Britain, where banks are permitted periodically to revalue their own premises. Latent revaluation reserves are hidden values (that is, values that are not formally recorded on the balance sheet) that reflect unrealized capital appreciation on long-term holdings of equity securities. These reserves are defined as the difference between the current market value of the securities and the carrying value of the securities based on historic cost. In some countries, notably Japan, such revaluation reserves are substantial.

In the United States, banking organizations for the most part follow generally accepted accounting principles (GAAP) when preparing their financial statements, and GAAP generally does not permit the use of market-value accounting. Consistent with this approach, the Federal banking agencies have not included unrealized asset values in capital ratio calculations, although such values have long been

[11] Criteria for instruments issued by state member banks and bank holding companies are set forth in 12 CFR Part 225, Appendix A; those for national banks are set forth in 12 CFR 3.100(e)(5); and those for state non-member banks are set forth in 12 CFR 325.2(e).

[12] Unsecured debt issued by bank holding companies prior to March 12, 1988, and qualifying as capital at the time of issuance, would continue to qualify as capital under the risk-based framework, subject to the 50 percent of core capital limitation. Bank holding company term debt issued after this date must be subordinated in order to qualify as capital.

taken into account in assessing an organization's overall financial health. In addition to the fact that U.S. accounting procedures have not traditionally recognized revaluation reserves, the uncertainty and volatility that may be associated with the market values of securities and buildings may be viewed as inconsistent with the emphasis on capital as a reliable and determinable source of strength when an organization is experiencing financial adversity.

In light of these considerations, the equivalent of revaluation reserves for U.S. banking organizations will not be formally recognized in supplementary capital or in the calculation of the risk-based capital ratio. However, all banking organizations are encouraged to disclose publicly their equivalent of premises and equity revaluation reserves, and such values will be taken into account as additional factors in assessing overall capital adequacy and financial condition. For example, other things being equal, organizations with significant and reliable revaluation reserves may be permitted to operate closer to the minimum risk-based capital ratio than organizations without such unrealized gains.

Deductions from capital and other adjustments. Certain assets would be deducted from a banking organization's capital base for the purpose of calculating the numerator of the risk-based capital ratio.[13] These assets include:

(1) Goodwill and other disallowed intangibles—deducted from Tier 1;

(2) Capital investments in unconsolidated banking and finance subsidiaries and, on a case-by-case basis, other subsidiaries or associated companies at the discretion of the supervisory authority—deducted from the sum of Tier 1 and Tier 2; and

(3) Reciprocal holdings of capital instruments of banking organizations—deducted from the sum of Tier 1 and Tier 2.

Goodwill and other intangible assets. Goodwill is an intangible asset that represents the excess of the purchase price over the fair market value of net assets acquired in acquisitions accounted for under the purchase method of accounting. Because banks generally may not include goodwill in regulatory capital under current supervisory policies, all goodwill in banks will be deducted from Tier 1 capital immediately.[14]

Under current policies, bank holding company goodwill is not deducted automatically from capital for general supervisory purposes. Thus, goodwill acquired by holding companies prior to March 12, 1988, would be "grandfathered" during the transition period (until the end of 1992). Any goodwill acquired after March 12, 1988, and all goodwill (including previously grandfathered goodwill) would be deducted from Tier 1 capital after 1992.

The Federal banking agencies' policies regarding other identifiable intangible assets are discussed in detail in the Agencies' respective proposed risk-based capital guidelines.

As a general rule, the Federal banking agencies believe that banking organizations should maintain strong tangible core capital bases in relation to weighted risk assets. Banking organizations that seek to expand significantly, either through internal growth or acquisition, will be expected to maintain capital positions that are above minimum supervisory levels, or otherwise acceptable to their primary Federal regulator, without undue reliance on intangible assets.

Investments in certain subsidiaries. Any equity or debt capital investments in banking or finance subsidiaries that are not consolidated under regulatory reporting requirements [15] would be deducted from an organization's total capital base (i.e., the sum of core capital and supplementary capital elements).[16] For this purpose, a subsidiary generally is defined as any banking or finance company in which the reporting institution holds more than 50 percent of the outstanding common stock. The assets of unconsolidated subsidiaries are not fully reflected in a banking organization's consolidated total assets. Such assets may be viewed as the equivalent of off-balance sheet exposures since the operations of an unconsolidated subsidiary could expose the parent organization and its consolidated subsidiaries to considerable risk. For this reason, it is appropriate to view the capital invested in these entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks or additional leverage elsewhere in the organization.

As a general rule, U.S. banking organizations do not have unconsolidated subsidiaries engaged in banking or finance since generally accepted accounting principles normally require the consolidation of such entities. Aside from these entities, the deduction of equity and debt capital investments from the banking organization's capital may at some future date be applied in the case of other subsidiaries, such as securities affiliates, if such action were necessary to facilitate functional regulation of financial service subsidiaries. This approach may also be applied, on a case-by-case basis, to certain *consolidated* subsidiaries for the purpose of determining whether the banking organization meets the capital standard without reliance on the capital invested in these subsidiaries. Finally, the Federal banking agencies may, at a later date, seek public comment on the extension of this approach to all subsidiaries engaged in certain specified activities for the purpose of assessing the banking organization's consolidated capital position, exclusive of the capital supporting these activities. In general, when investments in a subsidiary are deducted from a banking organization's capital, the subsidiary's assets will also be excluded from the assets of the banking organization in order to assess the latter's capital adequacy.

The Federal banking agencies had contemplated deducting from capital investments in all other unconsolidated subsidiaries (such as those engaged in businesses other than banking or finance) as well as investments in joint ventures and associated companies, since the rationale set forth above is also applicable to these entities.[17] Although the Agencies continue to believe that unconsolidated subsidiaries and associated companies may pose special risks for banking organizations, they have decided not to *automatically* deduct such investments from capital at this time. Instead, the Agencies intend to monitor the level and nature of such investments for individual banking organizations and, on a case-by-case

[13] Any deductions made against capital in computing the numerator of the ratio would also be deducted from the appropriate asset categories in computing the denominator of the ratio.

[14] Goodwill acquired by banks in connection with supervisory mergers would continue to be included in capital for risk-based capital purposes under terms and conditions established by the banking organization's primary Federal regulator. Other previously permitted goodwill would not be deducted from Tier 1 capital until year end 1992.

[15] The requirements for consolidation are spelled out in the instructions to the bank Consolidated Reports of Condition and Income and the Consolidated Bank Holding Company FR Y-9 Report.

[16] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith.

[17] Under regulatory reporting procedures, associated companies and joint ventures are generally defined as companies in which the banking organization owns 20 to 50 percent of the voting stock.

basis, may deduct such investments from capital or apply an appropriate risk-weighted capital charge against the organization's percentage share of the assets of these entities.

Reciprocal holdings of bank capital instruments. Reciprocal holdings of capital securities (i.e., capital instruments that qualify as Tier 1 or Tier 2 capital) would be deducted from the organizations' total capital bases for the purpose of determining the numerator of the risk-based capital ratio. Reciprocal holdings are cross-holdings or other formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. Generally, as this definition implies, deductions would be limited to intentional cross holdings.

The Federal banking agencies also considered whether to deduct non-reciprocal holdings of capital securities issued by other banking organizations on the grounds that the purchase by one banking organization of capital securities issued by another organization does not represent additional capital to the banking system. In addition, such purchases may increase the interdependency of banking institutions generally and thus increase the possibility that problems could be transmitted from one banking institution to another. At present, the Agencies are not proposing to deduct non-reciprocal holdings of such capital instruments. Rather, the Agencies intend to monitor non-reciprocal holdings of other banking organizations' capital securities and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

Table II summarizes the definition of capital for risk-based capital purposes.

III. Risk Weights for Assets and Off Balance Sheet Items

Weighted risk assets are determined by assigning assets and off-balance sheet credit equivalent amounts to one of five broad risk categories based principally on the degree of credit risk associated with the obligor. The five risk categories are 0, 10, 20, 50, and 100 percent—the latter representing the standard risk category which contains most loans to private sector entities. Table III summarizes the assignment of assets to risk categories.

In determining weighted risk assets, the only forms of *collateral* that are formally recognized by the risk asset framework are cash on deposit in the lending institution; securities issued by, or guaranteed by, the U.S. Government or its agencies; and securities issued by, or guaranteed by, U.S. Government-sponsored agencies. (See definitions below.) The only *guarantees* that are recognized are guarantees, or guarantee-type instruments, of the U.S. Government or its agencies, U.S. Government-sponsored agencies, domestic state and local governments, and domestic depository institutions. While not formally factored into the ratio, the existence of other forms of collateral or guarantees would be taken into account in making an overall assessment of the risks inherent in an organization's loan portfolio. Maturity is generally not a factor in assigning items to risk categories with the exceptions of securities issued by the U.S. Government or its agencies, claims on foreign banks, commitments, and interest rate swaps and foreign exchange contracts—all of which are discussed in greater detail below.

The remainder of this section explains in greater detail the assignment of assets and off-balance sheet items to risk categories.

Risk Weights for Balance Sheet Assets

Category 1—Zero percent. This category includes cash (domestic and foreign) owned and held in all offices of a bank or in transit; claims on, and balances due from, Federal Reserve Banks; and, in light of their near-cash characteristics, securities issued by the U.S. Government or its agencies (direct obligations) with a remaining maturity of 91 days or less.[18] Any foreign currency held by banks should be converted into U.S. dollar equivalents at current exchange rates. Deposit reserves and other balances at Federal Reserve Banks are included in Category 1, but Federal Reserve Bank stock is assigned to Category 2, and carries a weight of 10 percent.

Category 2—10 percent. This category includes securities issued by the U.S. Government or its agencies with a remaining maturity of over 91 days and all other claims (including leases) on the U.S. Government or its agencies.[19] While these obligations bear no credit risk, this treatment is generally consistent with the latitude afforded by the Basle capital framework to recognize some degree of market and interest rate risk. In addition, all securities and loans *guaranteed* by the U.S. Government or its agencies (including portions of such assets guaranteed) are also included in this category. Only that portion of the loan that is guaranteed by a U.S. Government agency is to be included in this category; the remainder is to be assigned to the risk category otherwise appropriate to the obligor.

Category 2 also includes portions of all loans and other assets that are *collateralized* by securities issued by, or guaranteed by, the U.S. Government or its agencies or by cash on deposit in the lending institution. The degree or extent of collateral backing is based upon the current market value of the underlying collateral. Those portions of claims not secured by recognized collateral would be assigned to the risk category otherwise appropriate to the obligor.

The book value of paid-in stock of a Federal Reserve Bank is also assigned to Category 2.

Category 3—20 percent. The principal items in this category include short-term (original maturity of one year or less) claims on domestic depository institutions [20] and foreign banks,[21] including foreign central banks; cash items in process of collection; long-term (original maturity of more than one year) claims on domestic depository institutions; [22] and the portions of

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[18] For this purpose, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[19] Examples of U.S. Government agencies include the Government National Mortgage Association (GNMA), the Small Business Administration (SBA), the Veterans Administration, the Federal Housing Administration, the Export-Import Bank (Exim Bank), and the Overseas Private Investment Corporation (OPIC).

[20] Domestic depository institutions are defined to include branches (foreign and domestic) of banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. To be included in this category, depository institutions must be federally-insured. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic banks, and U.S.-chartered depository institutions owned by foreigners. However, this definition excludes both branches and agencies of foreign banks located in the U.S. and bank holding companies.

[21] Foreign banks are defined as institutions that are organized under the laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business; and have the power to accept demand deposits. Foreign banks include U.S. branches and agencies of foreign banks.

[22] Claims on foreign banks with an original maturity exceeding one year and claims on bank holding companies are assigned to Category 5, which carries a weight of 100 percent.

claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions. This category also includes claims on, or portions of claims guaranteed by, U.S. Government-*sponsored* agencies and portions of claims collateralized by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.[23] (The degree of collateralization in this regard is based upon the market value of the underlying collateral.) In addition, this category includes general obligation claims on, or portions of claims guaranteed by the full faith and credit of, U.S. state and local governments. Finally, local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country; [24] and claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member are also assigned to Category 3.[25]

Claims on banks and depository institutions consist of balances due from such institutions, including demand deposits and other transaction accounts, savings deposits, and time certificates of deposit; and federal funds sold and securities purchased under agreements to resell for which a depository institution is the counterparty. To the extent that federal funds and resale agreements are collateralized by U.S. Government or agency securities, they are to be included in Category 2, which carries a weight of 10 percent.

Among other items considered to be claims on depository institutions are loans to such institutions, including overdrafts and term federal funds; holdings of the institution's own discounted acceptances for which the account party is a depository institution; holdings of bankers acceptances of other banks; and securities issued by depository institutions, except those that qualify as capital (which are to be excluded from this category and included in Category 5).

Category 3 also includes those portions of loans or other assets guaranteed by, or backed by the full faith and credit of, a *domestic* depository institution,[26] such as commercial paper or tax-exempt securities backed by a standby letter of credit. Risk participations in bankers acceptances and standby letters of credit conveyed to other domestic depository institutions are equivalent to financial guarantee-type instruments issued by such institutions. Accordingly, portions of customers' liabilities to the bank on outstanding acceptances guaranteed through risk participations conveyed to other domestic depository institutions are to be netted from the outstanding exposure to the underlying account party and included in Category 3. Likewise, the credit equivalent amount of standby letters of credit conveyed to other domestic depository institutions in the form of risk participations is to be netted from the exposure to the account party and assigned to this category.[27] If the guarantee matures or expires and the asset or off-balance sheet exposure is still outstanding, the guaranteed portion of the asset or off-balance sheet exposure is to be reassigned to the risk category appropriate to the underlying obligor.

General obligations of states and political subdivisions of the U.S. include loans, leases, and securities such as notes, bonds, and debentures (including tax warrants and tax-anticipation notes). Because such general obligation claims are secured by the full faith and credit of the local taxing authority, they are assigned to a lower risk weight category than revenue bonds issued by U.S. state or local governments, which are repayable with revenues from the specific projects financed. Public purpose revenue (non-general obligation) bonds for which the underlying obligor is the state or local governmental authority are assigned to Category 4, which has a risk weight of 50 percent. Revenue bonds for which the underlying obligor is a *private entity* are assigned to Category 5, which has a risk weight of 100 percent.

The Basle capital framework provides flexibility to national supervisory authorities in assigning risk weights to claims on the domestic public sector (e.g., Government-sponsored agencies and state and local governmental units) because risk characteristics of these claims vary from country to country. The assignment of claims on U.S. Government-*sponsored* agencies and general obligation claims on U.S. state and local governments to this category, rather than to the 10 percent category, reflects the fact that while such claims generally involve low risks, they are not identical to claims that carry the explicit full faith and credit guarantee of the U.S. Government.

Category 4: 50 percent. This category includes revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. state or local governments, but for which the government entity is committed to repay the debt with revenues from the facilities financed, rather than from general tax funds.

Category 5: 100 percent. All assets not classified in the categories above are assigned to this category, which comprises standard risk assets. This category includes the bulk of the assets typically found in a loan portfolio.

Category 5 consists of all claims on foreign banks with an original maturity exceeding one year, all non-local currency claims on foreign governments, and local currency claims on a foreign central government that exceed local currency liabilities held by the bank in the foreign country. Thus, this category includes all claims on foreign governments that entail an element of transfer risk. This category also includes all claims on foreign and domestic private sector obligors not included in the categories above; claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims (that is, claims

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[23] For this purpose, U.S. Government-*sponsored* agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly guaranteed* by the full faith and credit of the U.S. Government. Examples of such agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association.

[24] A foreign central government is defined to include departments, ministries, and agencies of the central government. It does not include state, provincial, or local governments; commercial enterprises owned by the central government; or private agencies sponsored by the central government. In addition, claims on foreign central governments do not include claims on non-central government entities that are guaranteed by the foreign central government.

[25] Claims on official multilateral lending institutions or regional development institutions include securities issued by international and regional organizations to which the U.S. belongs. Claims on such institutions include loans to the International Monetary Fund, the International Bank for Reconstruction and Development (World Bank), the Bank for International Settlements, the Inter-American Development Bank, and the African Development Bank, and bankers acceptances for which the account party is one of these multilateral or regional institutions.

[26] The Basle capital framework does not recognize guarantees issued by foreign banks or depository institutions. The treatment of guarantees by the *issuing* bank in the form of standby letters of credit or acquisitions of risk participations is discussed below in the off-balance sheet section.

[27] This treatment would also apply to participations in commitments conveyed to other domestic depository institutions if the conveying bank remains obligated to the customer for the full amount of the commitment in the event the participating institution fails to fund its portion of the commitment.

assigned to the 100 percent category);[28] investments in fixed assets, premises, and other real estate owned; investments in unconsolidated companies, joint ventures or associated companies that have not been deducted from capital; instruments that qualify as capital issued by other banking organizations; and common and preferred stock of corporations, including stock acquired for debts previously contracted. Also included in this category are industrial development bonds and similar obligations issued by U.S. state or local governments for the benefit of a private party or enterprise where that party or enterprise, not the government, is committed to pay the principal and interest.

Finally, this category includes commercial and individual mortgage loans, including loans secured by 1–4 family residential mortgages. While the Basle capital framework provides for the assignment of the latter to the 50 percent category, the Federal banking agencies, consistent with past risk-based capital proposals, intend to give these assets a weight of 100 percent. The Federal banking agencies, as a matter of general policy, have long sought to avoid the appearance or reality of regulatory credit allocation among private sector borrowers in formulating their capital adequacy programs. Thus, the agencies will continue the policy of *not* singling out particular sectors or segments of the private economy on an *ex ante* basis for the purpose of according special low-risk capital treatment. The agencies believe that decisions on allocating credit among private sector borrowers are better left to bank management. However, for the purpose of supervisory comparisons among major international banking organizations, the Federal banking agencies will take account of, and, where appropriate, adjust for holdings of residential mortgage loans by U.S. banking organizations.

Treatment of Off-Balance Sheet Items

Risk weights for all off-balance sheet items are determined by a two-step process. First, the notional principal, or face value, amount of the off-balance sheet item is generally multiplied by a credit conversion factor to arrive at a balance sheet "credit equivalent amount". Then the credit equivalent amount is assigned, like any balance sheet asset, to the appropriate risk category, according to the obligor, or, if relevant, the guarantor or the nature of the collateral. Table IV summarizes the treatment of off-balance sheet obligations.

Items with a 100 Percent Conversion Factor. Direct credit substitutes are any irrevocable off-balance sheet obligations in which a bank has essentially the same credit risk as if it had made a direct loan to the obligor or account party.[29] Direct credit substitutes include guarantees, or guarantee-type instruments, backing financial claims, such as outstanding securities, loans and other financial liabilities. Thus, direct credit substitutes include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that back or guarantee repayment of commercial paper, tax-exempt securities, commercial or individual loans or debt obligations, commercial letters of credit, or other off-balance sheet exposures that require capital backing under the risk-based capital framework. (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

Direct credit substitutes are converted at 100 percent and the resulting credit equivalent amount is then assigned to the appropriate risk category like any other asset. For example, standby letters of credit backing outstanding commercial paper issued by a private firm, or backing tax-exempt public purpose municipal revenue bonds, would be assigned to the 100 percent and 50 percent categories, respectively. The credit equivalent amount of risk participations conveyed to other domestic depository institutions would be assigned to the 20 percent category.[30]

Standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the bank to pay a third-party beneficiary when the bank's customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute) or *fails to perform* some other contractual obligation (performance bond). A loan commitment, on the other hand, involves an obligation (irrevocable or revocable under certain terms) of the bank to fund its customer *in the normal course* of business should the customer seek to draw down the commitment. The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is, therefore, the combination of irrevocability with the notion that funding is triggered by some failure to perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or fails to perform a contractual obligation would be treated, for risk-based capital purposes, as respectively, a financial guarantee-type standby letter of credit or a performance standby.

The acquisition of risk participations in bankers acceptances and participations in financial guarantee-type standby letters of credit or other direct credit substitutes also involve assuming risks that are analogous to direct loans to the account parties or obligors. Participations acquired by a bank in bankers acceptances and direct credit substitutes (including standby letters of credit) are converted at 100 percent and assigned to the appropriate risk weight category depending upon the identity of the account party or obligor.

Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet, are treated in the same way as direct credit substitutes. The risk-based capital definition of the sale of assets with recourse, including the sale of one-to-four family residential mortgages, is the same as the definition contained in the instructions to the bank Consolidated Reports of Condition and Income (Call Report).[31]

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[28] Customer liabilities on acceptances outstanding involving claims in other than the 100 percent category, such as claims on domestic banks, would be assigned to the risk category appropriate to the identity of the obligor or the other relevant characteristics of the claim.

[29] The focus in this context is on credit risk. For example, if Bank A guarantees, or equivalently backs, a loan from Bank B (beneficiary) to Bank A's customer (account party) and the customer defaults, then Bank A must pay Bank B and Bank A ends up with a problem loan to its customer—the same result as would have occurred if Bank A had made a direct loan to its customer. It is recognized that, while financial guarantee-type instruments involve credit risks similar to direct loans, providing financing through such instruments does not entail funding risks unless the standby is drawn down. The treatment of financial guarantee-type instruments and equivalent standby letters of credit in a manner similar to direct loans is consistent with the fact that such exposures generally are covered by statutory limits on loans to a single borrower, warrant the same credit review and approval process as traditional loans, and are treated and analyzed like loans by bank supervisors.

[30] This refers to participations in which the originating bank remains liable to the beneficiary for the full amount of the standby if the participating depository institution fails to perform under the guarantee. Those participations that are syndicated out, that is, where each depository institution is responsible only for its pro-rata share of the risk and there is *no recourse* to the originating bank, would be excluded entirely from the originating bank's weighted risk assets.

[31] In regulatory reports and under GAAP, bank holding companies are permitted to treat some asset sales with recourse as "true" sales, even though similar transactions by banks must be reported as borrowings on the bank call report. For risk-based

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For U.S.-chartered banks, assets sold subject to an agreement to repurchase, or for which any risk of loss is retained, are generally required to remain on the balance sheet of the "selling" bank and the proceeds of the "sale" are recorded as a borrowing in accordance with the Call Report instructions. Such assets retained on the balance sheet are to be assigned to a risk weight category appropriate to the obligor, guarantor, or collateral. So-called "loan strips" (i.e., short-term advances sold under long-term commitments) sold without direct recourse are accorded the same treatment as assets sold with recourse.

Forward agreements are legally binding agreements (contractual obligations) to purchase assets with *certain* drawdown at a specified future date. These obligations include forward purchases, forward deposits, and partly-paid shares and securities; they do not include commitments to make residential mortgage loans. On the date a bank enters into such an agreement, it should convert the principal amount of the assets to be purchased at 100 percent and then assign this amount to the risk category appropriate to the obligor or guarantor of the item, or the nature of the collateral.

Items with a 50 Percent Conversion Factor. Transaction-related contingencies include bid bonds, performance bonds, performance standby letters of credit, warranties, and standby letters of credit related to particular transactions. These instruments are different from financial guarantee-type standby letters of credit in that performance standbys generally represent obligations backing the performance of *nonfinancial* or *commercial* contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, contractors' and suppliers' performance, labor and materials contracts, and construction bids. These instruments generally involve guaranteeing the account party's obligation to deliver a service or product in the conduct of its day-to-day business.

Unused commitments with an *original* maturity exceeding one year, including underwriting commitments, and commercial and consumer credit commitments also are to be converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which the following two conditions hold: (1) The bank can, at its option, unconditionally (without cause) cancel the commitment, *and* (2) the bank actually reviews the facility to determine whether or not it should be extended.[32] Commitments with an original maturity of one year or less are deemed to involve low risk and, therefore, are not assessed a capital charge (that is, they are assigned a 0 percent credit conversion factor). Such short-term commitments are defined to include unused lines of credit on retail credit cards that can be unconditionally cancelled by the bank at any time. However, commitments with an original maturity of over one year to extend loans under home equity or mortgage lines would be converted at 50 percent and then assigned to the 100 percent risk weight category.

For the purpose of calculating the risk-based capital ratio, commitments are defined as any arrangements between a banking organization and its customer that legally obligate the banking organization to extend credit to the customer in the form of loans or leases, the purchase of loans or securities, or participation in loans and leases. They also include such undertakings as overdraft facilities, revolving credit, or similar transactions. Normally, commitments involve a written contract or agreement, a commitment fee, or some other form of consideration. Commitments are included in weighted risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the bank of its funding obligation under certain conditions.

Commitments with material adverse change clauses are included because such commitments are nonetheless binding and may involve risk if a bank funds the commitment *before* the customer's condition deteriorates, or before the deterioration is recognized. Moreover, while the Federal banking agencies do not wish to discourage the use of material adverse change clauses, some court decisions suggest that the presence of a material adverse change clause cannot necessarily be relied on in all cases to relieve a bank of its obligations pursuant to a commitment.

In the case of commitments structured as syndications, the risk-based capital framework includes only the banking organization's proportional share of such commitments. After conversion at 50 percent, participations in commitments conveyed to other domestic banks, but in which the originating bank retains the full obligation to the borrower if the participating bank fails to perform, would be assigned to the 20 percent risk category. This treatment is analogous to risk participations in standby letters of credit.

Only the unused portion of commitments are treated as off-balance sheet items. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet and such amounts, therefore, are not also to be included as commitments for purposes of computing the risk asset ratio.

Revolving underwriting facilities RUFs and note issuance facilities (NIFs) also are to be converted at 50 percent. These are arrangements under which a borrower can issue on a revolving basis short-term paper in its own name but for which the underwriting banks have a legally binding commitment either to purchase any notes the borrower is unable to sell by the roll-over date or to advance funds to the borrower. The original maturity of the commitment typically is five to seven years, while the paper most frequently is issued for maturities of three or six months. For bank issuers, the paper usually takes the form of short-term certificates of deposit, for non-bank borrowers, it usually takes the form of promissory notes (commonly known as Euro-notes). For the purpose of calculating the risk-based capital ratio, similar arrangements such as note purchase facilities and Euro-note facilities are to be treated in the same manner as RUFs and NIFs.

Items with a 20 Percent Conversion Factor. Short-term, self-liquidating trade-related contingencies which arise from the movement of goods include commercial letters of credit and other documentary letters of credit collateralized by the underlying shipments.

Items with a Zero Percent Conversion Factor. These include unused commitments with an original maturity of one year or less. Original maturity, as noted above, is the earliest date after the commitment is made that a bank: (1) Can, at its option, unconditionally (without cause) cancel the commitment *and* (2) actually reviews the facility to determine whether or not it should be extended. Facilities that, at the bank's option, are *unconditionally* cancellable

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capital purposes, however, such assets sold with recourse and reported as "true" sales by bank holding companies would be converted at 100 percent and assigned to the risk category appropriate to the underlying obligor, provided the transactions met the definition of assets sold with recourse contained in the bank Report of Condition.

[32] Facilities that are unconditionally (without cause) cancellable at any time by the bank are not deemed to be commitments, provided the bank makes a separate credit decision before each drawing under the facility

at any time are not considered to be commitments, provided that the bank makes a separate credit decision before each drawdown under the facility. Unused retail credit card lines are deemed to be short-term commitments if the bank has the unconditional option to cancel the card at any time.

Interest Rate and Foreign Exchange Rate Contracts

Risk weights for interest rate and exchange rate contracts are determined by a two-step process. First, the notional principal amount of the item is converted into a balance sheet equivalent measure which approximates the amount of credit exposure involved. Second, the resulting credit equivalent amount is assigned to the appropriate risk asset category, based primarily on the identity of the obligor counterparty), or, where relevant, on the nature of the guarantee or the underlying collateral.

Risk Analysis. The treatment of interest rate, foreign exchange rate, and related contracts takes account of the fact that the credit risks associated with these contracts is generally not equal to the notional value of the contracts. Rather, the cost to a banking organization of counterparty default on an interest rate or exchange rate contract is the cost of replacing the cash flows specified by the contract. At the time a contract is initiated, it can be replaced at little or no cost because interest rates or exchange rates embodied in the contract reflect those prevailing in the market. But as time passes and market rates change, the value of the cash flows that the banking organization is entitled to receive from the counterparty under the contract terms often will exceed the value of the cash flows it is obligated to pay. If the counterparty were to default in such a circumstance, the banking organization would have to pay a premium to replace, or reestablish, the cash flows specified by the original contract.

A fundamental premise underlying the treatment of off-balance sheet exposures in the risk-based capital framework is that capital support is required not only for current exposure to losses, but also for potential future increases in that exposure. Accordingly, U.S. banking organizations will be required to utilize the *current exposure method*, as set forth in the Basle capital framework, to determine the capital necessary to support their interest rate and exchange rate contract portfolios. This method requires banking organizations to calculate the credit equivalent amount by: (1) Determining the current replacement cost of contracts having positive value on the reporting date by marking them to market, and (2) adding to that amount an estimate (the "add-on") of the potential increase in credit exposure over the remaining life of all contracts by multiplying the notional value of all contracts by the conversion factors prescribed below.[33]

Scope. Credit equivalent amounts would be computed for the following:

I. Interest Rate Contracts

A. Single currency interest rate swaps.
B. Basis swaps.
C. Forward rate agreements.
D. Interest rate options purchased.
E. Any other instrument that gives rise to similar credit risks.

II. Exchange Rate Contracts

A. Cross-currency interest rate swaps.
B. Forward foreign exchange contracts.
C. Currency options purchased.
D. Any other instrument that gives rise to similar credit risks.

Over-the-counter options purchased would be treated in exactly the same way as the other interest rate and exchange rate contracts. That is, the credit equivalent amount would be the sum of the marked-to-market replacement cost and the "add-on" amount for potential future exposure.

Exceptions. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

Calculation of Credit Equivalent Amounts. Credit equivalent amounts would be calculated for contracts of the types described under *Scope* above. To calculate the credit equivalent amount of its off-balance sheet interest rate and exchange rate instruments, a bank would sum:

(1) The current exposure, that is, the mark-to-market value (positive values only) of their contracts, and

(2) An estimate of the potential future increases to credit exposure over the remaining life of the instruments.

Examples of the calculation of credit equivalent amounts for these instruments are contained in Table V.

Current Exposure. Current exposure is simply the mark-to-market value of a contract on the reporting date, if positive. The mark-to-market value is the amount the banking organization would have to pay to replace the net payment stream specified by the contract if the counterparty were to default. Negative mark-to-market values would not be taken into account in the calculation of credit equivalent amounts. The mark-to-market value would include the value of interest that has accrued but has not been received. Mark-to-market values would be measured in dollars, regardless of the currency or currencies specified in the contracts.

Potential Future Exposure. Potential future exposure represents the additional exposure that may arise over the remaining life of the contract as a result of fluctuations in interest rates or exchange rates. Such changes may increase the market value of the contract in the future and, therefore, increase the cost of replacing it if the counterparty subsequently defaults. Thus, these contracts entail a commitment by the banking organization to assume additional credit exposure in the future. This commitment requires capital support beyond what is necessary to support the current exposure on the reporting date. Potential exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market value, by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
Less than 1 year		1.0
1 year and over	0.5	5.0

Because exchange rate contracts involve an exchange of principal upon maturity and exchange rates are generally more volatile than interest rates, higher conversion factors are proposed for foreign exchange

[33] Despite the wide range of different instruments in the market, the methodology used for assessing the credit risk on all of the contracts is the same. The analysis consists of examining the behavior of matched pairs of swaps under different volatility assumptions. A matched pair is a pair of contracts with identical terms, for which the banking organization is the buyer of one of the contracts and the seller of the other. The analysis assumes that estimates based on matched pairs provide a more accurate representation of credit exposure on a portfolio of interest rate and exchange rate contracts than estimates based on single contracts. Because banking organizations often act as intermediaries between end-users of contracts, a large share of their portfolios often consist of matched—or nearly matched—pairs. The volatility analysis was conducted by the staffs of the Bank of England and the U.S. Federal bank supervisory authorities. This analysis involved estimating the volatility of interest rates and exchange rates. The analysis produced probability distributions of potential replacement costs over the remaining life of matched pairs of contracts. Potential exposure was then defined in terms of confidence limits for (percentiles of) these distributions. This analysis provided the basis for the "adds-ons" included in the Basle capital framework.

instruments than for interest rate contracts.

No potential credit exposure would be calculated for single currency floating/floating interest rate swaps; the credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value.

Application of Credit Equivalent Amounts Within the Overall Risk Framework. Table V provides examples of how credit equivalent amounts for several types of interest rate and foreign exchange rate contracts would be calculated. In each case, three pieces of information are needed to calculate the credit equivalent amount: the current mark-to-market value, the notional principal, and the remaining maturity of the contract.

Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount will be weighted within the overall framework according to the category of the counterparty, and, in some cases, to the nature of any underlying collateral or guarantees. In accordance with the Basle capital framework, the maximum weight applied to the credit equivalent amount would be 50 percent. However, the Federal banking agencies intend to monitor the quality of credits in the interest rate and exchange rate markets and, in the future, would consider, if appropriate, assigning credit equivalent amounts for contracts involving standard risk obligors to the 100 percent risk category, as is the case with other off-balance-sheet instruments.

Accounting. In certain cases, credit exposures arising from the interest rate and exchange rate instruments covered by this proposal may already be reflected, in part, on the balance sheet. For example, U.S. banking organizations generally record current counterparty credit exposures mark-to-market values on forward foreign exchange contracts on the balance sheet. In addition, some U.S. banking organizations also include certain counterparty credit exposures that arise from interest rate swaps and options purchased on the balance sheet.

To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by this proposal may need to be excluded from balance sheet assets in calculating banking organizations' total weighted risk asset ratios. The Federal banking agencies will address this issue in designing reporting systems.

Collateral. The existence of collateral is recognized in assigning credit equivalent amounts for these contracts to risk categories under the same conditions and limitations as discussed above for on-balance sheet claims.

Netting. In accordance with the terms of the Basle capital framework, netting of swaps and similar contracts will not be recognized at this time. While the Federal banking agencies encourage any reasonable arrangements designed to reduce the risks inherent in these transactions, the Basle Supervisors' Committee felt that the legal issues posed by netting arrangements require further consideration.

Relationship to Prior Proposals. The "add-ons" contained in the Basle capital framework differ in several respects from the corresponding calculation for potential future exposure incorporated in the U.S./U.K. proposal.[34] These changes reflect in part recognition of comments received on the U.S./U.K. proposal, and have the effect of reducing the capital requirements contained in that earlier measure.

The proposed method of calculating the potential exposure under the Basle framework is significantly less complex than that recommended in the U.S./U.K. proposal. In simplifying the methodology, assumptions about the pattern of banks' portfolios (including the rates at which contracts have been entered into and their average maturity) have been introduced that have involved a loss of some precision relative to the U.S./U.K. measure. However, the Federal banking agencies believe that the current formula for calculating the credit equivalent amount for interest rate and exchange rate contracts represents an acceptable balance between the need to capture the risks associated with these instruments and the need to avoid unnecessary complexity.

IV. Target Ratio Standard

After the transition period (by the end of 1992), all banking organizations would be expected to meet a minimum ratio of total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of core capital (Tier 1).

The maximum amount of supplementary capital elements that could qualify as Tier 2 capital would be limited to the total amount of core capital. Within Tier 2, the maximum amount of allowance for loan and lease losses that would qualify as capital would be limited to 1.25 percent of weighted risk assets. In addition, the combined maximum amount of subordinated debt and intermediate-term preferred stock that would qualify as Tier 2 capital would be limited to 50 percent of Tier 1 capital.

Total capital is calculated by adding core, or Tier 1, capital (defined to exclude goodwill and disallowed intangibles) to supplementary, or Tier 2, capital (limited to 100 percent of core capital) and then deducting from this sum any capital investments in unconsolidated banking and finance subsidiaries, reciprocal holdings of banking organization capital securities, or other items at the direction of the supervisory authority.

A transition period has been provided to give banking organizations time to bring their capital positions into conformity with the risk-based standards and definitions. The transition period would end December 31, 1992. Banking organizations not currently meeting the 8 percent minimum would be expected to undertake a sustained effort to meet that standard by year-end 1992.

V. Transition and Implementing Arrangements

Transition Arrangements

The proposed transition period is designed to facilitate smooth adjustment and phasing in of the risk-based capital measure and the minimum ratio standard within a wide variety of supervisory systems. The transition period would begin on the date that the proposed risk-based capital framework becomes effective and end on December 31, 1992. In addition, there will be an interim target ratio to be met by the end of 1990.

Initial period to the end of 1990. From the beginning of the transition period until the end of 1990, no formal risk-based capital standard or minimum level will be set. As noted above, the Federal banking agencies would expect any organization that has a risk-based ratio of less than 8 percent to move in the direction of that target during the transition period and meet the target by the end of 1992. Banking organizations with ratios of 8 percent or lower should not make adjustments to their risk profiles or undertake growth plans that would lower their ratios.

As indicated, the Basle capital framework establishes no initial

[34] The fact that in-the-money interest rate contracts tend to entail less potential future exposure relative to other contracts is implicitly recognized in the Basle framework. In addition, in this framework, lower confidence levels are employed, and, in the underlying technical analysis, potential future exposures are discounted. Finally, the maximum weight assigned to credit equivalent amounts for standard risk obligors under the Basle framework is 50 percent, rather than 100 percent.

standard. However, for the purpose of calculating the ratio during the initial period, the Basle capital framework allows the core capital of an organization to include some supplementary capital elements. Specifically, a maximum of 25 percent of core capital (before any deduction of goodwill and other disallowed intangibles) may consist of supplementary capital elements, with the remainder consisting of common stockholders' equity (including retained earnings). By year-end 1990, banking organizations would be expected to reduce the amount of supplementary capital included in core capital to no more than 10 percent of core capital.

For bank holding companies, any goodwill acquired before March 12, 1988, would be grandfathered until the end of 1992. Goodwill acquired by holding companies after this date, and all goodwill on holding company books after 1992, would be deducted from Tier 1 capital components to arrive at core capital.

Initially, the allowance for loan and lease losses may be included in a banking organization's supplementary capital without limit. However, by the end of 1990, such reserves counted in supplementary capital may not exceed 1.5 percent of weighted risk assets.

Existing primary and total capital-to-*total* assets (leverage) ratios would continue to be employed during this initial period. The Federal banking agencies will, prior to year-end 1990, consider whether a leverage ratio will continue to be employed in conjunction with the implementation of the risk-based standard. If a leverage ratio is employed after 1990, the Agencies may, after appropriate consideration, adopt for leverage ratio purposes the Tier 1 and Tier 2 capital definitions contained in the risk-based capital guidelines.

Year-end 1990 through year-end 1992. During this interval, banking organizations would be expected to meet a minimum total capital to weighted risk asset ratio of 7.25 percent, at least one-half of which should be in the form of core capital. During this period, up to 10 percent of an organization's core capital (before any deduction of goodwill and disallowed intangibles) may consist of supplementary capital elements. Thus, the interim target ratio implies a minimum ratio of core capital to weighted risk assets of 3.6 percent (one-half of 7.25) and a minimum common stockholders' equity to weighted risk assets ratio of 3.25 percent (nine-tenths of the core capital ratio). Any organization not meeting the minimum supervisory ratios would be expected to develop and discuss with its supervisory authority a plan setting forth how the organization intends to reach them.

By the end of 1992, an organization's required core capital must consist solely of common stockholders' equity.

During this period, the maximum amount of allowance for loan and lease losses that may qualify as supplementary capital will be limited to 1.5 percent of weighted risk assets (that is, 1.5 percentage points of the required 7.25 percent), declining to 1.25 percent by year-end 1992. Amounts in excess of these limits may, of course, be maintained, but would not be included in an organization's total capital base. (The Federal banking agencies, however, will continue to require banking organizations to maintain reserves at levels sufficient to cover losses inherent in their loan portfolios.)

A summary of important aspects of the transitional arrangements is contained in Table VI.

Application and Implementation of the Risk-Based Capital Measure

The Basle capital framework recommends that the risk-based standard be applied to international banks but recognizes that each national supervisory authority may wish to apply the framework to a broader class of commercial banking organizations. Since the condition or stability of any institution is affected by its level of off-balance sheet exposure or the risk composition of its asset portfolio, the risk-based capital proposal outlined above provides a systematic analytical framework that is equally relevant for large and small institutions.

For these reasons, the Federal banking agencies intend to apply the risk-based capital measure, including the minimum supervisory ratio guidelines, to all banking organizations on a consolidated basis, regardless of size.[35] This will include an assessment of risk-based capital ratios during examinations and reviews of supervisory applications. In implementing the risk-based ratio, the banking agencies will apply the framework in a flexible manner, giving banking organizations a reasonable amount of time to develop the systems and procedures necessary to calculate the risk-based ratio.

While the risk-based standard will be applied to banking organizations of all sizes, the principal impact of the measure will generally fall on large banking institutions and those with significant off-balance sheet exposures. Aside from the calculation of the risk-based ratio during on-site examinations, the off-site supervisory data collection and monitoring effort associated with the risk-based standard could focus on one of the following three options:

1. All banking organizations;

2. Banking organizations with either (i) consolidated assets in excess of some threshold amount, such as $150 million, $1 billion, or $10 billion, or (ii) off-balance sheet exposure (after adjustment based upon prescribed credit conversion factors) in excess of 20 percent of common stockholders' equity; or

3. Banking organizations with consolidated assets in excess of $20 billion.

Given the objectives of the banking agencies and the Basle capital framework, it would appear necessary to modify the supervisory reporting forms for, at least, the large banking organizations, such as those with consolidated assets in excess of $1 billion, and for those with significant off-balance sheet exposure. However, the Federal banking agencies are seeking public comment on which of the three options above should serve as the primary focus of the supervisory data collection and monitoring effort.

During the transition period, the Federal banking agencies will modify appropriate supervisory reporting forms, primarily for the larger institutions, to bring regulatory reporting requirements generally into line with the major provisions of the risk-based capital measure. In doing this, the Agencies will endeavor to lessen the impact on recordkeeping and reporting burden by phasing in any new reporting requirements, by allowing sufficient time to modify internal recordkeeping and reporting systems, and, under appropriate conditions, by employing *de minimis* exceptions or other arrangements designed to minimize data collection. The latter may be particularly appropriate for smaller banking organizations or those with minimal off-balance sheet exposures. All banking organizations, however, will be expected to develop over time internal recordkeeping and control systems sufficient to allow supervisory officials and examiners to evaluate the organizations' capital positions in a manner generally consistent with the risk-based capital framework.

As noted above, this proposal, consistent with the Basle capital

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[35] Bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated holding company basis under the same terms and conditions as provided in the Federal Reserve's current Guidelines.

framework, establishes no initial minimum risk-based ratio and provides for a transition period, running through the end of 1992, during which banking organizations are expected to bring their capital positions into compliance with the prescribed framework. As discussed above, the proposed ratio does not take explicit account of all factors affecting an organization's risk profile, such as asset concentrations, overall interest-rate exposure, asset quality problems or other financial or operating weaknesses. For this reason, banking organizations will generally be encouraged to operate above the minimum risk-based capital ratio, and, as is currently the case, the Federal banking agencies may establish a specific target ratio for an individual company that is above the minimum.

The transition arrangements, including the length of the transition period, are designed to provide banking organizations with a degree of flexibility in complying with the risk-based framework. In particular, these arrangements will minimize the possibility that banking organizations would be forced to take steps that could be disruptive or inconsistent with prevailing conditions in the capital markets. While the proposal provides for a phase-in period, banking organizations, as already noted, are encouraged to bring their capital positions into compliance with minimum supervisory benchmarks as soon as reasonably possible.

Banking organizations will be able to comply with the risk-based capital guidelines in several ways, some of which do not require raising new external capital. For example, an organization can moderate growth or increase earnings retention. More importantly, however, within a risk-sensitive capital standard, an organization can raise its capital ratio by reducing its overall risk profile. This can be done by reducing off-balance sheet exposure or by placing proportionately greater emphasis on those activities that carry lower risk weights.

Relationship to Existing Capital Guidelines

The Federal banking agencies will maintain their existing minimum primary and total capital-to-*total* assets ratios of 5.5 and 6.0 percent, respectively, until the end of 1990—unless revisions to these leverage ratios are made prior to this date. This is appropriate because there is a need for some total leverage guideline, especially during the initial phase of the risk-based transition period, when no minimum risk-based ratio would be in effect. In addition, maintenance of capital-to-total assets standards will provide an important element of continuity during the implementation of the risk-based framework.

By year-end 1990, the Federal banking agencies will review the merits of continuing to employ an overall leverage constraint in tandem with the risk-based capital ratio. In particular, the agencies will consider whether the existing capital-to-total assets ratios should be reduced or eliminated. If the agencies conclude that a total leverage constraint should be maintained, the definition of capital for leverage purposes may, after appropriate consideration, be aligned with the risk-based capital definitions.

Operation of a leverage guideline in parallel with a risk-based capital measure may be appropriate because certain risks associated with high leverage, such as interest rate exposure and the possible depreciation in the market value of certain assets, are not fully factored into the risk-based standard. Under a risk-based standard by itself, a banking organization with a preponderance of assets in the 20, 10, or zero percent risk categories (such as U.S. Government securities) would be subject to only a very minimal constraint on total leverage—or, at least in theory, to no leverage constraint at all, if all assets were held in the form of instruments assigned to the zero percent risk category. Therefore, in the absence of capital-to-total assets guidelines, or other prudential limits on total borrowing in relation to capital, banking organizations could assume an unwarranted degree of leverage.[36]

Issues for Specific Comment

The Federal banking agencies seek comments on all aspects of the proposed risk-based capital proposal. In addition, however, the agencies invite comments on the following specific issues:

1. The proposed risk-based framework assigns claims on foreign banks and commitments to risk categories based, in part, on their *original* maturity. The Federal banking agencies recognize that, for this purpose, a case can be made to utilize *remaining*, rather than original, maturity. Would remaining maturity be a better criterion to use in assigning bank claims and commitments to risk categories?

2. From an analytical standpoint and to avoid possible "window dressing", the preferred approach to calculating capital ratios would generally be to utilize average, rather than period-end, figures—at least for most of the items upon which the ratio is based. However, the determination of average balance sheet figures may involve additional recordkeeping burden for institutions. Should the ratio be calculated from average figures? For which items used in calculating the ratio are average figures most important? How can the burden involved in determining average figures be minimized?

3. While the risk-based standard will be applied to banking organizations of all sizes, its principal impact will generally fall on large banking institutions and those with significant off-balance sheet exposures. Aside from the calculation of the risk-based ratio during on-site examinations, the off-site supervisory data collection and monitoring effort associated with the risk-based framework could focus on one of the following three classes of organizations:

1. All banking organizations;

2. Banking organizations with either (i) consolidated assets in excess of some threshold amount, such as $150 million, $1 billion, or $10 billion, or (ii) off-balance sheet exposure (after adjustment based upon prescribed credit conversion factors) in excess of 20 percent of common stockholders' equity; or

3. Banking organizations with consolidated assets in excess of $20 billion.

Given the objectives of the Federal banking agencies and the Basle capital framework, it would appear necessary to modify the supervisory reporting forms for, at least, the large banking organizations, such as those with consolidated assets in excess of $1 billion, and for those with significant off-balance sheet exposure. However, the Federal banking agencies seek public comment on which of the three options above should serve as the primary focus of the supervisory data collection and monitoring effort.

4. The Basle capital framework generally assigns the credit equivalent amount of interest rate and foreign exchange contracts involving standard risk obligors to the 50 percent, rather than 100 percent, risk category. This is based upon the argument that obligors in these markets tend to be of high quality. The Federal banking agencies seek comments on the merits of this contention, and whether they are

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[36] If a leverage ratio is adopted in conjunction with the risk-based capital measure, banking organizations could, with the permission of their supervisory authority, be allowed to operate with capital-to-total assets ratios below the minimum. Such organizations would have to be in compliance with the risk-based standard and relatively free of risks not captured by the risk-based measure.

sufficient to warrant the proposed treatment.

5. Under the proposed risk-based capital framework, the amount of intermediate-term preferred stock and subordinated term debt that can be included in supplementary capital is limited to 50 percent of core capital. Limited-life preferred stock with an original maturity of at least 20 years may be counted as supplementary capital without limit. Is this distinction between intermediate-term and long-term preferred stock appropriate? Does the distinction offer banking organizations viable and useful options for maintaining minimum risk-based capital requirements?

6. The proposal assigns claims (excluding obligations with a remaining maturity of 91 days or less) on the U.S. Treasury and U.S. Government agencies to the 10 percent category, while claims on U.S. Government-*sponsored* agencies are placed in the 20 percent category. Under the earlier U.S./U.K. proposal, claims on Government-sponsored agencies were placed in the 50 percent risk category. The distinction between claims on the U.S. Treasury and claims on Government-sponsored agencies is based upon the fact that the latter lack the explicit full faith and credit guarantee of the U.S. Government. In light of the absence of such a guarantee and the proposed treatment of U.S. Treasury obligations, what is the most appropriate treatment of debt issued or guaranteed by U.S. Government-sponsored agencies?

TABLE I.—SAMPLE CALCULATION OF RISK-BASED CAPITAL RATIO

	Amount
Example of a bank with $6,000 in total capital and the following assets and off-balance sheet items:	
Balance Sheet Assets:	
Cash	$10,000
Long-term U.S. Government securities	$20,000
Balances at domestic banks	5,000
Loans to private corporations	65,000
Total Balance Sheet Assets	$100,000
Off-Balance Sheet Items:	
Standby letters of credit ("SLCs") backing general obligation debt issues of U.S. municipalities ("GOs")	$10,000
Long-term commitments to private corporations	20,000
Total Off-Balance Sheet Items	$30,000
This bank's total capital to *total* assets ratio would be: ($6,000/$100,000) = 6.00%.	

OBS Item	Face Value		Conversion Factor		Credit Equivalent Amount
To compute the bank's weighted risk assets:					
1. Compute the credit equivalent amount of each off-balance sheet ("OBS") item.					
SLCs backing municipal GOs	$10,000	×	1.00	=	$10,000
Long-term commitments to private corporations	$20,000	×	0.50	=	$10,000
2. Multiply each balance sheet asset and the credit equivalent amount of each OBS item by the appropriate risk weight.					
0% Category: Cash	$10,000	×	0	=	$0
10% Category: Long-term U.S. Government securities	$20,000	×	0.10	=	$2,000
20% Category:					
Balances at domestic banks	$5,000				
Credit equivalent amounts of SLCs backing GOs of U.S. municipalities	10,000				
Total	$15,000	×	0.20	=	$3,000
50% Category: No items.					
100% Category:					
Loans to private corporations	$65,000				
Credit equivalent amounts of long-term commitments to private corporations	10,000				
Total	$75,000	×	1.00	=	$75,000
Total Risk-Weighted Assets					$80,000
This bank's *risk-based* capital ratio would be: ($6,000/$80,000) = 7.50%.					

TABLE II.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1):	Must equal or exceed 4% of weighted risk assets.
Common stockholders' equity.	No limit.
Minority interest in common equity accounts of consolidated subsidiaries.	No limit.
Less: Goodwill and other disallowed intangibles.[1]	
Supplementary Capital (Tier 2):	Total of Tier 2 is limited to 100% of Tier 1.
Allowance for loan and lease losses.	Limited to 1.25% of weighted risk assets.[2]

TABLE II.—DEFINITION OF QUALIFYING CAPITAL—Continued

Components	Minimum requirements and limitations after transition period
Perpetual and long-term preferred stock (original maturity 20 years or more).	No limit within Tier 2, long-term preferred is amortized for capital purposes as it approaches maturity.
Hybrid capital instruments (including perpetual debt mandatory convertible securities).	No limit within Tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 7 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1 [2]; amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building).	Not included; regulators would encourage banks to disclose; would evaluate on case-by-case basis for international comparisons; and would take into account in making overall assessment of capital.
Deductions (from sum of Tier 1 and Tier 2):	
Investments in unconsolidated banking and finance subsidiaries.	
Reciprocal holdings of bank issued capital securities.	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On case-by-case basis or as matter of policy after formal rulemaking.
Total Capital (Tier 1 + Tier 2 – Deductions):	Must equal or exceed 8% of weighted risk assets.

[1] Goodwill on books of bank holding companies before March 12, 1988, would be "grandfathered" for transition period. All goodwill and disallowed intangibles in banks, except previously grandfathered intangibles or goodwill approved in supervisory mergers, would be deducted immediately as under current policies. (See each Agency's proposed guidelines for a more thorough discussion of goodwill and other intangibles). All deductions are for capital adequacy purposes only; deductions would not affect accounting treatment.

[2] Amounts in excess of limitations are permitted but do not qualify as capital.

TABLE III.—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

Category 1: Zero percent

1. Cash (domestic and foreign).
2. Balances due from, and claims on, Federal Reserve Banks.
3. Securities (direct obligations) issued by the U.S. Government or its agencies[1] with a remaining maturity of 91 days or less.

Category 2: 10 percent

1. Securities issued by the U.S. Government or its agencies[1] with remaining maturities of over 91 days and all other claims (loans and leases) on the U.S. Government or its agencies.[1]
2. Securities and other claims guaranteed by the U.S. Government or its agenices (including portions of claims guaranteed).
3. Portions of loans and other assets collateralized[2] by securities issued by, or guaranteed by, the U.S. Government or its agencies, or by cash on deposit in the leading institution.
4. Federal Reserve Bank stock.

Category 3: 20 percent

1. All claims (long- and short-term) on domestic depository institutions.
2. Claims on foreign banks with an original maturity of one year or less.
3. Claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions.
4. Local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country.
5. Cash items in the process of collection.
6. Securities and other claims on, or guaranteed by, U.S. Government-*sponsored* agencies (including portions of claims guaranteed).[3]
7. Portions of loans and other assets collateralized[4] by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.
8. General obligation claims on, and claims guaranteed by, U.S. state and local governments that are secured by the full faith and credit of the state or local taxing authority (including portions of claims guaranteed).
9. Claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.

Category 4: 50 Percent

1. Revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. state or local governments, but for which the government entity is committed to repay the debt only out of revenues from the facilities financed.
2. Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category.

Category 5: 100 Percent

1. All other claims on private obligors.
2. Claims on foreign banks with an original maturity exceeding one year.
3. Claims on foreign central governments that are not included in item 4 of Category 3.
4. Obligations issued by state or local governments (including industrial development authorities and similar entities) repayable solely by a private party or enterprise.
5. Premises, plant, and equipment; other fixed assets; and other real estate owned.
6. Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital.
7. Instruments issued by other banking organizations that qualify as capital.
8. All other assets (including claims on commerical firms owned by the public sector).

TABLE IV.

Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

1. Direct credit substitutes (general guarantees of indebtedness and guarantee-type instruments, including standby letters of credit serving as financial guarantees for, or supporting, loans and securities).
2. Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes (e.g., standby letters of credit).
3. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.
4. Forward agreements (that is, contractual obligations) to purchase assets, including financing facilities with *certain* drawdown.

50 Percent Conversion Factor

1. Transaction-related contingencies (e.g., bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction).
2. Unused commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.
3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

20 Percent Conversion Factor

1. Short-term, self-liquidating trade-related contingences, including commercial letters of credit.

Zero Percent Conversion Factor

1. Unused commitments with an original maturity of one year or less or which are unconditionally cancellable at any time.

Credit Conversion for Interest Rate and Foreign Exchange Contracts

The total replacement cost of contracts

[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[2] Degree of collateralization is determined by current market value.

[3] For the purpose of calculating the risk-based capital ratio, a U.S. Government-*sponsored* agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

[4] Degree of collateralization is determined by current market value.

(obtained by summing the positive mark-to-market values of contracts) would be added to a measure of future potential increases in credit exposure. This future potential exposure measure would be calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than one year	0	1.0%
One year and over	0.5%	5.0%

No potential exposure would be calculated for single currency floating/floating interest rate contracts; the credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

TABLE V.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS

[Interest Rate and Foreign Exchange Rate Related Transactions]

Type of contract (remaining maturity)	Potential exposure						Current exposure			Credit equivalent amount
	National principal		Potential exposure conversion factor		Potential exposure (dollars)		Replacement cost [1]	Current exposure (dollars) [2]		
	(1)	×	(2)	=	(3)	+	(4)	(5)	=	
(1) 120-day forward foreign exchange	$5,000,000		0.01		50,000		100,000	100,000		$150,000
(2) 120-day forward foreign exchange	6,000,000		.01		60,000		−120,000	0		60,000
(3) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		200,000	200,000		250,000
(4) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		−250,000	0		50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000		.05		1,000,000		−1,300,000	0		1,000,000
Total	51,000,000									1,510,000

[1] These numbers are purely for illustration.
[2] The larger of zero or a positive mark-to-market value.

TABLE VI

	Transitional arrangements		Final arrangement: Year-End 1992
	Initial	Year-End 1990	
1. Minimum standard of total capital to weighted risk assets.	None	7.25 percent	8.0 percent
2. Definition of tier 1 capital	Common equity *plus* supplementary elements [1] *less* goodwill and other disallowed intangibles [2].	Common equity *plus* supplementary elements [3] *less* goodwill and other disallowed intangibles [2].	Common equity *less* goodwill and other disallowed intangibles.
3. Minimum standard of tier 1 capital to weighted risk assets.	None	3.625 percent	4.0 percent.
4. Minimum standard of common stockholders' equity to weighted risk assets.	None	3.25 percent	4.0 percent.
5. Limitations on supplementary capital elements.			
a. Allowance for loan and lease losses.	No limit within supplementary capital	1.5 percent of weighted risk assets	1.25 percent of weighted risk assets.
b. Subordinated debt and intermediate term preferred stock.	Combined maximum of 50 percent of tier 1.	Combined maximum of 50 percent of tier 1.	Combined maximum of 50 percent of tier 1.
c. Total qualifying supplementary capital.	May not exceed tier 1 capital	May not exceed tier 1 capital	May not exceed tier 1 capital.
6. Definition total capital	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.

[1] Up to 25 percent of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.
[2] See the Notice of Proposed Guidelines and the actual text of the proposed guidelines for discussion of relevant definitions and grandfathering arrangements for goodwill.
[3] Up to 10 percent of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.

Regulatory Flexibility Act Analysis

While all commercial banks would presumably be required to make some revisions to their reporting procedures to permit supervisory monitoring of risk-based capital ratios, the Federal banking agencies do not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities, in this case small banking organizations, in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, this proposal would generally not apply to bank holding companies with consolidated assets less than $150 million.

This proposal is designed primarily to take account of those practices, such as the increased use of off-balance sheet risk and the decline in the holdings of low-risk, liquid assets, which have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banking organizations to raise additional capital, this proposal is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles.

Executive Order 12291

The Comptroller of the Currency certifies that the proposal, if adopted, would not constitute a "major rule" and, therefore, does not require the preparation of a preliminary regulatory impact analysis.

Comporting Changes to Part 3

If this proposal is adopted, it will, when the Comptroller's guidelines become effective, necessitate certain changes to the existing capital maintenance provisions of 12 CFR Part 3. Specifically, it is anticipated that, at least, portions of §§ 3.2, 3.3, 3.4, 3.6, 3.7 and 3.100 will require changes so as to be consistent with this proposal.

List of Subjects

12 CFR Part 3

National banks, Capital, Risk.

12 CFR Part 225

Banks, Banking, Capital adequacy, Federal Reserve system, Holding companies, Reporting requirements, State member banks.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Federal Deposit Insurance Corporation, Capital adequacy, State nonmember banks.

BILLING CODES 4810-33-M; 6210-01-M; 6714-01-M

DEPARTMENT OF THE TREASURY—OFFICE OF THE COMPTROLLER OF THE CURRENCY

Authority and Issuance

For the reasons set forth in the preamble, Part 3 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—[AMENDED]

1. The authority citation for 12 CFR Part 3 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.*; 12 U.S.C. 93a, 161, 1818; and 12 U.S.C. 3907 and 3909.

2. A new Appendix A is added to Part 3 to read as follows:

Appendix A—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions

(a) *Purpose.* (1) An important function of the Office of the Comptroller of the Currency ("OCC") is to evaluate the adequacy of capital maintained by each national bank. Such an evaluation involves the consideration of numerous factors, including the riskiness of a bank's assets and off-balance sheet items. This Appendix A implements the OCC's risk-based capital guidelines. The risk-based capital ratio derived from these guidelines is more systematically sensitive to the riskiness of bank activities than are the capital-to-total assets ratios presently required by 12 CFR Part 3. A bank's risk-based capital ratio is obtained by dividing its capital base (as defined in section 2 of this Appendix A) by its average risk-weighted assets (as calculated pursuant to section 3 of this Appendix A). These guidelines were created within the framework established by the report issued by the Basle Committee on Banking Regulations and Supervisory Practices on December 10, 1987. That report had as its principal objectives the establishment of a uniform capital framework for the international banking system and the mitigation of an important source of competitive inequality for banks arising from differences in the way countries required their banking and finance companies to maintain capital. The OCC believes that the risk-based capital ratio is a useful tool in evaluating the capital adequacy of all national banks, not just those that are active in the international banking system.

(2) The purpose of this Appendix A is to explain precisely (i) how a national bank's risk-based capital ratio is determined and (ii) how these risk-based capital guidelines are applied to national banks. The OCC will review these guidelines periodically for possible adjustments commensurate with its experience with the risk-based capital ratio and with changes in the economy, financial markets and domestic and international banking practices.

(b) *Applicability.* (1) The risk-based capital ratio derived from these guidelines is an important factor in the OCC's evaluation of a bank's capital adequacy. However, the final supervisory judgment on a bank's capital adequacy is based on numerous factors, including those listed in 12 CFR 3.10, and may differ significantly from conclusions that might be drawn solely from the bank's risk-based capital ratio.

(2) Effective December 31, 1990, these risk-based capital guidelines will apply to all national banks. In the interim, banks must maintain minimum capital-to-total assets ratios as required by 12 CFR Part 3, and should begin preparing for the implementation of these risk-based capital guidelines. In this regard, each national bank that does not currently meet the interim ratio established in section 4(a)(1) of this Appendix A should establish a plan for meeting that standard. By December 31, 1990, the OCC will determine the need for operating these risk-based capital guidelines in tandem with some minimum capital-to-total assets ratios. If a tandem system is adopted, it is anticipated that any required minimum capital-to-total assets ratios will be based upon the capital definitions set forth in section 2 of this Appendix A. Under such a system, a national bank that meets the standard set forth in these risk-based capital guidelines may be allowed to operate below the capital-to-total assets ratios on a case-by-case basis, as long as the overall risk profile of that bank is low.

(3) These risk-based capital guidelines will not be applied to federal branches and agencies of foreign banks.

(c) *Definitions.* For purposes of this Appendix A, the following definitions apply:

(1) "Allowance for loan and lease losses" means the balance of the valuation reserve on December 31, 1968, plus additions to the reserve charged to operations since that date, less losses charged against the allowance net of recoveries.

(2) "Associated company" means any corporation, partnership, business trust, joint venture, association or similar organization in which a national bank directly or indirectly holds a 20 to 50 percent ownership interest.

(3) "Average risk-weighted assets" means a daily average of a national bank's risk-weighted assets.

(4) "Banking and finance subsidiary" means any subsidiary of a national bank that engages in banking-and finance-related activities.

(5) "Cash items in the process of collection" means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation in the country in which the reporting bank's office that is clearing or collecting the check or draft is located; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation in the United States or the country in which the reporting bank's office that is handling the drafts is located; and unposted debits.

(6) "Commitment" means any arrangement that obligates a national bank to: (i) Purchase loans or securities; or (ii) extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, or similar transactions.

(7) "Common stockholders' equity" means common stock, common stock surplus, undivided profits, and capital reserves, net of foreign currency translation adjustment and unrealized losses on non-current marketable equity securities.

(8) "Domestic depository institution" means all federally-insured offices (branch and main, foreign and domestic) of banks and other deposit-taking institutions chartered and headquartered in any of the several states of the United States of America, the District of Columbia, Puerto Rico, and United States territories and possessions. This definition encompasses commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions, and international banking facilities of domestic depository institutions. U.S. branches and agencies of foreign banks are excluded from this definition.

(9) "Exchange rate contracts" include: Cross-currency interest rate swaps; forward foreign exchange rate contracts; currency options purchased; and any similar

instrument that, in the opinion of the OCC, gives rise to similar risks.

(10) "Foreign bank" means (i) a foreign central bank or (ii) a financial institution which is organized under the laws of a foreign country; that engages in the business of banking; that is recognized as a bank by the bank supervisory or monetary authorities of the country in which its principal banking operations are organized; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. This includes U.S. branches and agencies of foreign banks.

(11) "Foreign central government" means the national governing authority of a country other than the United States of America; it includes the departments, ministries and agencies of the central government. This definition does not include the following: State, provincial, or local governments; commercial enterprises owned by the central government, which are defined as entities engaged in activities involving trade, commerce or profit that are generally conducted or performed in the private sector of the United States economy; private agencies sponsored by the central government; and non-central government entities that are guaranteed by the foreign central government.

(12) "Goodwill" means an intangible asset that represents the excess of the purchase price over the fair market value of tangible and identifiable intangible assets acquired in purchases accounted for under the purchase method of accounting.

(13) "Intangible assets" include, but are not limited to, purchased mortgage servicing rights, goodwill, favorable leaseholds, and core deposit value.

(14) "Interest rate contracts" include: Single currency interest rate swaps; basis swaps; forward rate agreements; interest rate options purchased; and any similar instrument that, in the opinion of the OCC, gives rise to similar risks.

(15) "Original maturity" means, with respect to a commitment, the earliest possible date after a commitment is made on which it is unconditionally cancellable at the option of the issuing bank.

(16) "Preferred stock" includes the following instruments: (i) "Convertible preferred stock," which means preferred stock that is mandatorily convertible into either common or perpetual preferred stock; (ii) "Intermediate-term preferred stock," which means preferred stock with an original maturity of at least seven years, but less than 20 years; (iii) "Long-term preferred stock," which means preferred stock with an original maturity of 20 years or more; and (iv) "Perpetual preferred stock," which means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder. For purposes of these instruments, preferred stock that can be redeemed at the option of the holder is deemed to have an "original maturity" of the earliest possible date on which it may be so redeemed.

(17) "Reciprocal holdings of bank capital instruments" means cross-holdings or other formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. This definition does not include holdings of capital instruments issued by other banking organizations that were taken in satisfaction of debts previously contracted, provided that the reporting national bank has not held such instruments for more than five years or such longer period approved by the OCC.

(18) "State" means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(19) "Subsidiary" means any corporation, partnership, business trust, joint venture, association or similar organization in which a national bank directly or indirectly holds more than a 50% ownership interest. This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting bank has not held such interest for more than five years or such longer period approved by the OCC.

(20) "Total capital" is the sum of a national bank's core (Tier 1) and supplementary (Tier 2) capital elements.

(21) "Unconditionally cancellable," with respect to a commitment-type lending arrangement, including retail credit card lines, means the bank may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(22) "United States Government or its agencies" means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

(23) "United States Government-sponsored agency" means an agency originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

Section 2. Components of Capital

A national bank's qualifying capital base consists of two types of capital—core (Tier 1) and supplementary (Tier 2).

(a) *Core (Tier 1) Capital.* The following elements comprise a national bank's core (Tier 1) capital:

(1) Common stockholders' equity; and

(2) Minority interests in the common stockholders' equity accounts of consolidated subsidiaries.

(b) *Supplementary (Tier 2) Capital.* The following elements comprise a national bank's supplementary (Tier 2) capital:

(1) Allowance for loan and lease losses, up to a maximum of 1.25 percent of risk-weighted assets, subject to the transition rules in section 4(a)(2) of this Appendix A.

(2) Perpetual preferred stock, long-term preferred stock, and convertible preferred stock, without limit, if the issuing national bank has the option to defer payment of dividends on these instruments. For long-term preferred stock, the amount that is eligible to be included as supplementary (Tier 2) capital is reduced by 20% of the original amount of the instrument (net of redemptions) at the beginning of each of the last five years of the life of the instrument.

(3) Hybrid capital instruments, without limit. Hybrid capital instruments are those instruments which combine certain characteristics of debt and equity, such as perpetual debt. To be included as supplementary (Tier 2) capital, these instruments must meet the following criteria: [1]

(i) The instrument must be unsecured, subordinated to the claims of depositors and general creditors, and fully paid-up;

(ii) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the OCC;

(iii) The instrument must be available to participate in losses while the issuer is operating as a going concern (in this regard, the instrument must automatically convert to common or perpetual or long-term preferred stock if the sum of the retained earnings and capital surplus accounts of the issuer shows a negative balance); and

(iv) The instrument must provide the option for the issuer to defer principal and interest payments, if

(A) the issuer does not report a net profit for the most recent combined four quarters, and

(B) the issuer eliminates cash dividends on common and preferred stock.

(4) Term subordinated debt instruments and intermediate-term preferred stock are included in supplementary (Tier 2) capital, but only to a maximum of 50% of core (Tier 1) capital. To be considered capital, term subordinated debt instruments must meet the requirements of 12 CFR 3.100(f)(1). Also, at the beginning of each of the last five years of the life of either type of instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original amount of that instrument (net of redemptions).

(c) *Deductions from capital.* The following items are deducted from the appropriate segment of a national bank's capital base when calculating its risk-based capital ratio.

(1) Deductions from core (Tier 1) capital: All intangible assets, including goodwill, are deducted from core (Tier 1) capital before the supplementary (Tier 2) portion of the calculation is made, subject to the transition rules contained in section 4(a)(1)(ii) of this Appendix A; however, purchased mortgage servicing rights are not deducted from core (Tier 1) capital. In addition, the OCC might not require national banks to deduct goodwill that they acquire, or have previously acquired, in connection with supervisory mergers with problem or failed banks.

(2) Deductions from total capital:

(i) Reciprocal holdings of capital instruments of banking organizations; and

(ii) Investments in the equity accounts of unconsolidated banking and finance subsidiaries.[2]

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[1] Mandatory convertible debt instruments that meet the requirements of 12 CFR 3.100(e)(5), or that have been previously approved as capital by the OCC, are treated as qualifying hybrid capital instruments, regardless of whether they meet the requirements of this section 2(b)(3).

[2] The OCC may require deduction, on a case-by-case basis, of investments in associated companies, unless the bank can demonstrate that it does not exercise a significant influence over the entity.

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

The denominator of the risk-based capital ratio, *i.e.*, a national bank's average risk-weighted assets, is derived by assigning that bank's assets and off-balance sheet items to one of the five risk categories detailed in section 3(a) of this Appendix A. Each category has a specific risk weight. Before an off-balance sheet item can be assigned a risk weight, it must be converted to an on-balance sheet credit equivalent amount in accordance with section 3(b) of this Appendix A. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit equivalent that is included in the denominator of the bank's risk-based capital ratio. Thus, an asset/credit equivalent assigned to the 20% category is one against which a national bank is expected to maintain one-fifth of the capital it should maintain against an asset/credit equivalent in the 100% category. Any asset deducted from a bank's capital in computing the numerator of the risk-based capital ratio is not included as part of the bank's risk-weighted assets.

(a) *On-Balance Sheet Assets.* The following are the risk categories/weights for on-balance sheet assets:

(1) *Zero percent Risk Weight.* (i) Cash, including domestic and foreign currency owned and held in all offices of a national bank or in transit. Any foreign currency held by a national bank should be converted into U.S. dollar equivalents.

(ii) Deposit reserves and other balances at Federal Reserve Banks.

(iii) Securities issued by the United States Government or its agencies that have a remaining maturity of 91 days or less.

(2) *10 percent Risk Weight.* (i) Securities issued by the United States Government or its agencies that have a remaining maturity greater than 91 days.

(ii) That portion of assets guaranteed by the United States Government or its agencies.

(iii) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States Government or its agencies.

(iv) The book value of paid-in Federal Reserve Bank stock.

(v) Assets collateralized by cash in a segregated deposit account held by the reporting national bank.

(3) *20 percent Risk Weight.* (i) All claims on domestic depository institutions, and all assets backed by the full faith and credit of domestic depository institutions. This includes the credit equivalent amount of participations in commitments and standby letters of credit sold to other domestic depository institutions, but only if the originating bank remains liable to the customer or beneficiary for the full amount of the commitment or standby letter of credit. Also included in this category are the credit equivalent amounts of risk participations in bankers' acceptances conveyed to other domestic depository institutions. However, bank-issued securities that qualify as capital of the issuing bank are not included in this risk category but are assigned to the 100% risk category of section 3(a)(5) of this Appendix A.

(ii) Claims on foreign banks with an original maturity of one year or less.

(iii) Cash items in the process of collection.

(iv) Local currency claims on foreign central governments, to the extent the bank has local currency liabilities in that country. Any amount of such claims that exceed the amount of the bank's local currency liabilities is assigned to the 100% risk category of section 3(a)(5) of this Appendix A.

(v) Claims on United States Government-sponsored agencies.

(vi) That portion of assets guaranteed by United States Government-sponsored agencies.

(vii) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies.

(viii) General obligations of any state or any political subdivision thereof, within the meaning of 12 CFR 1.3(g), and that portion of any claims guaranteed by any such state or political subdivision.

(ix) Claims on official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.

(4) *50 percent Risk Weight.* (i) Revenue bonds issued by any state or any political subdivision thereof, within the meaning of 12 CFR 1.3(g), for which the underlying obligor is the state or political subdivision, but which are repayable solely from the revenues generated by the project financed through the issuance of the obligations.

(ii) The credit equivalent amount of interest rate and foreign exchange rate contracts, calculated in accordance with section 3(b)(5) of this Appendix A, that do not qualify for inclusion in a lower risk category.

(5) 100 percent Risk Weight. All other assets not specified above, including, but not limited to:

(i) Claims on foreign banks with an original maturity exceeding one year;

(ii) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in section 3(a)(3)(iv) of this Appendix A;

(iii) Instruments issued by other banking organizations that qualify as capital of the issuer;

(iv) Obligations issued by any state or any political subdivision thereof, within the meaning of 12 CFR 1.3(g), for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligations, *e.g.*, industrial development bonds;

(v) Any investments in unconsolidated subsidiaries that are not required to be deducted from the bank's qualifying capital base, pursuant to section 2(c)(3) of this Appendix A;

(vi) Assets secured by commercial and residential real estate, including mortgages on one-to-four family homes; and

(vii) Claims on foreign and domestic government-owned commercial enterprises.

(b) *Off-Balance Sheet Activities.* The risk weight assigned to an off-balance sheet activity is generally determined by a two-step process. First, the face amount of an off-balance sheet item is multiplied by the appropriate credit conversion factor detailed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit equivalent amount. Second, the resulting credit equivalent amount is then assigned to the proper risk category using the criteria regarding obligors, guarantors and collateral listed in section 3(a) of this Appendix A. The following are the credit conversion factors and the off-balance sheet items to which they apply.

(1) *100 percent credit conversion factor.* (i) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party.[3] The face amount of a direct credit substitute is netted against the amount of any participations sold in that item. The amount not so sold is converted to an on-balance sheet credit equivalent and assigned to the proper risk category using the criteria regarding obligors, guarantors and collateral listed in section 3(a) of this Appendix A. If the originating bank remains liable to the beneficiary for the full amount of the standby letter of credit, in the event the participant fails to perform under its participation agreement, the amount of participations sold are converted to an on-balance sheet credit equivalent with that amount then being assigned to the risk category appropriate for the purchaser of the participation, which, if the purchaser is a domestic depository institution, would be the 20% risk category of section 3(a)(3) of this Appendix A. If the participations are such that each participant is responsible only for its pro-rata share of the risk, and there is no recourse to the originating bank, the full amount of the participations sold is excluded from the originating bank's risk-weighted assets;

(ii) Risk participations purchased in bankers' acceptances and participations purchased in direct credit substitutes;

(iii) Assets sold under an agreement to repurchase and assets sold with recourse, to the extent these assets are not reported on a national bank's statement of condition (this includes loan strips sold without direct recourse); and

(iv) Contingent obligations with a certain draw down, *e.g.*, legally binding agreements to purchase assets at a specified future date.

(2) *50 percent credit conversion factor.* (i) Transaction-related contingencies, including, *inter alia*, performance bonds and performance-based standby letters of credit

[3] For purposes of this section 3(b)(1)(i), a "standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any indebtedness undertaken by the account party, in the event that the account party fails to fulfill its obligation to the beneficiary. Performance-based standby letters of credit are defined differently in section 3(b)(2)(i), *infra*.

related to a particular transaction.[4] To the extent permitted by law or regulation, performance-based standby letters of credit include such things as arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids;

(ii) The unused portion of loan commitments with an original maturity exceeding one year, including home-equity and mortgage lines of credit; and

(iii) Revolving underwriting facilities, note issuance facilities, and similar arrangements pursuant to which the bank's customer can issue short-term debt obligations in its own name, but for which the bank has a legally binding commitment to either:

(A) Purchase the obligations the customer is unable to sell by a stated date; or

(B) Advance funds to its customer, if the obligations cannot be sold.

(3) *20 percent credit conversion factor.* (i) Trade-related contingencies. These are short-term self-liquidating instruments used to finance the movement of goods and are collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(4) *Zero percent credit conversion factor.* (i) Unused commitments with an original maturity of one year or less;

(ii) Unused commitments with an original maturity of greater than one year, if:

(A) They are unconditionally cancellable by the bank, and

(B) The bank has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each drawing under the lending facility; and

(iii) Unused retail credit card lines that are unconditionally cancellable by the bank.

(5) *Interest rate and foreign exchange rate contracts.* The credit equivalent amount of such contracts is the sum of two measures of credit exposure—current and potential credit exposure.

(i) *Current credit exposure*—The daily replacement cost of the contract is determined by marking it to market (this value is measured in U.S. dollars, regardless of the currency specified in the contract). Contracts with negative market value are deemed to have no current credit exposure.

(ii) *Potential credit exposure*—To complete the calculation of the on-balance sheet credit equivalent amount of a contract, an estimate of the potential increase in credit exposure over the remaining life of the contract is added on (the "add-on") to the contract's current credit exposure, including contracts with no current credit exposure. The add-on is calculated by multiplying the notional principal amount of the item on a daily basis by one of the following credit conversion factors, as appropriate: [5]

(A) Interest rate contracts—

(I) Zero percent, if the contract has less than one year remaining until maturity, and

(II) 0.5 percent, for contracts with a remaining maturity of one year or more;

(B) Foreign exchange rate contracts—

(I) 1.0 percent, if the contract has less than one year remaining until maturity, and

(II) 5.0 percent, for contracts with a remaining maturity of one year or more.

(iii) *Risk weighting*—The credit equivalent amount, which is derived from sections 3(b)(5) (i) & (ii) of this Appendix A, is then assigned to the proper risk category using the criteria regarding obligors, guarantors, and collateral listed in section 3(a) of this Appendix A. However, the maximum risk weight assigned to the credit equivalent amount of an interest rate or foreign exchange rate contract is 50%.

(iv) *Exceptions*—The following contracts are not subject to the above calculation and, therefore, are not considered part of the denominator of a national bank's risk-based capital ratio:

(A) Exchange rate contracts with an original maturity of seven days or less; and

(B) Any interest rate or exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

Section 4. Implementation, Transition Rules, and Target Ratios

(a) *December 31, 1990 to December 30, 1992.* During this time period:

(1) All national banks are expected to maintain a capital to risk-weighted assets ratio of 7.25%.

(i) Fifty percent of this 7.25% must be made up of core (Tier 1) capital; however, of this 50%, up to 10% can be comprised of supplementary (Tier 2) capital elements.

(ii) Intangible assets, including goodwill, that national banks have been allowed to count as capital as a result of the transition rules contained in 12 CFR 3.3 are grandfathered until December 31, 1992, and, therefore, are not deducted from core (Tier 1) capital until that date.

(2) Allowance for loan and lease losses can be included in supplementary (Tier 2) capital up to a maximum of 1.5% of a bank's risk-weighted assets.

(3) Supplementary (Tier 2) capital elements that are not used as Part of core (Tier 1) capital will qualify as part of a national bank's total capital base up to a maximum of 100% of that bank's core (Tier 1) capital.

(b) *On December 31, 1992:*

(1) All national banks are expected to maintain a capital to risk-weighted assets ratio of 8.0%.

(2) One half of a national bank's total capital must consist of core (Tier 1) capital elements.

(3) Supplementary (Tier 2) capital elements qualify as part of a national bank's total capital base up to a maximum of 100% of that bank's core (Tier 1) capital.

Date: February 23, 1988.

Robert L. Clarke,

Comptroller of the Currency.

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[4] For purposes of this section 3(b)(2)(i), a "performance-based standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by the account party in the performance of a nonfinancial or commercial obligation. Participations in performance-based standby letters of credit are treated the same as participations in financial guarantee-type standby letters of credit. Financial guarantee-type standby letters of credit are defined in section 3(b)(1)(i), *supra*.

[5] No potential credit exposure is calculated for single currency floating/floating interest rate swaps; rather, the on-balance sheet credit equivalent of these contracts is evaluated solely on the basis of the amount of their current credit exposure.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909.

Appendix A—[Amended]

2. The Board proposes to amend Appendix A to Part 225 by adding at the end of the title to Appendix A: "Leverage Measure".

Appendix B—[Redesignated as Appendix C]

3. The Board proposes to amend the Appendices to Part 225 by redesignating the current Appendix B as Appendix C and adding a new Appendix B to read as follows:

Appendix B—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks: Risk-Based Measure

I. Overview

The Board of Governors of the Federal Reserve System has adopted a risk-based capital measure as part of the System's Capital Adequacy Guidelines. (Supervisory leverage ratios relating primary and total capital to total assets are outlined in Appendix A of these Guidelines.) The risk-based capital measure is based upon a framework developed jointly by supervisory authorities from 12 major industrial countries ("the Basle Supervisors' Committee"). This Basle capital framework was recommended by the Group of Ten Central Bank Governors as the basis for implementing a generally consistent international approach to assessing capital adequacy.

The principal objectives of the risk-based measure are to: (i) Make regulatory capital requirements more sensitive to differences in risk profiles among banking organizations; (ii) take off-balance sheet exposures into account in assessing capital adequacy; (iii) minimize disincentives to holding liquid, low-risk assets; and (iv) achieve a greater degree of consistency in the assessment of the capital adequacy of major banking organizations throughout the world.

The risk-based capital measure comprises a definition of capital and a system for calculating weighted risk assets by assigning assets and off-balance sheet items to risk categories. An institution's risk-based capital ratio is calculated by dividing its qualifying capital base (the numerator of the ratio) by its weighted risk assets (the denominator).

The definition of qualifying capital is outlined below in section II. and the procedures for calculating weighted risk assets are discussed in section III. Table I illustrates a sample calculation of weighted risk assets and the risk-based capital ratio. The risk-based guidelines also establish a schedule for achieving a minimum supervisory standard for the ratio of capital to weighted risk assets and provide for transitional arrangements during a phase-in period to facilitate adoption and implementation of the measure. These standards and transitional arrangements are set forth in section IV.

The risk-based guidelines apply to all state member banks and to bank holding companies with consolidated assets of $150 million or more. Bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated basis under the same terms and conditions as described in Appendix A (leverage measure) of the Capital Adequacy Guidelines.

The risk-based guidelines are to be used in the examination and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. Generally, banking organizations are expected to operate above the minimum risk-based standard. Those institutions with high or inordinate levels of risk should hold capital commensurate with their levels of risk.

The risk-based capital ratio focuses principally on broad categories of credit risk, although it does take one limited aspect of interest rate and market risk (maturity) into account in assigning certain assets to risk categories. The risk-based ratio (like the leverage measure) does not, however, take account of other factors that can affect an organization's financial condition. These factors include: Overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control other financial and operating risks.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors including, in particular, the level and severity of problem and classified assets. For this reason, the final supervisory judgment on an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based (or leverage-based) capital ratio.

II. Definition of Capital for the Risk-Based Capital Ratio

An institution's qualifying capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). These capital elements and the various limits, restrictions, and deductions to which they are subject are discussed below and are set forth in Table II.

A. The Components of Qualifying Capital

1. *Core capital elements (Tier 1).* Core capital elements consist of:

—Common stockholders' equity (common stockholders' equity includes common stock, surplus, and retained earnings, including disclosed capital reserves that represent an appropriation of retained earnings, net of treasury stock, and including foreign currency translation adjustments);

—Minority interest in the common stockholders' equity accounts of consolidated subsidiaries; and

—Supplementary capital elements (during the transition period only, and subject to certain limitations set forth in Section IV below).

At least 50 percent of the qualifying capital base of a bank holding company or state member bank must consist of core capital. For bank holding companies, core capital is defined, during the transition period (that is, through year-end 1992), as the sum of core capital elements minus any goodwill acquired on or after March 12, 1988. (During the transition period, bank holding company goodwill booked before March 12, 1988, would be "grandfathered", that is, would not be deducted from core capital during the transition period.) State member banks generally are prohibited from including goodwill in regulatory capital; thus, all bank goodwill is to be deducted immediately from state member bank core capital without any grandfather arrangements.[1] After the transition period (that is, after year-end 1992), *all* bank holding company goodwill will be deducted from the sum of the core capital elements for purposes of determining core capital and calculating the risk-based capital ratio.

2. *Supplementary capital elements (Tier 2).* A portion of an institution's qualifying capital base may consist of supplementary capital elements. Supplementary capital elements include:[2]

—Allowances for loan and lease losses (subject to limitations discussed below);

—Perpetual and long-term preferred stock (original maturity of at least 20 years);

—Hybrid capital instruments, including perpetual debt and mandatory convertible securities; and

—Term subordinated debt and intermediate-term preferred stock (original average maturity of seven years or more).

The maximum amount of supplementary elements that may be treated as regulatory capital will be limited to 100 percent of core capital (after any deductions of goodwill). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as supplementary capital for regulatory purposes will be limited to 50 percent of core capital. Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

Redemptions of Tier 2 capital instruments before stated maturity could have a significant impact on an organization's overall capital structure. Consequently, an organization should consult with the Federal Reserve before redeeming perpetual preferred stock or before redeeming any other Tier 2 capital instrument prior to maturity.

The components of supplementary capital are discussed in greater detail below.

a. *Allowance for loan and lease losses.* Allowances or loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves,"[3] and reserves created against identified losses or earmarked for a specific asset.

The risk-based capital guidelines provide a phasedown during the transition period of the extent to which the allowance for loan and lease losses may be included in an institution's capital base. Initially, no limit will apply to these reserves. However, by year-end 1990, the allowance for loan and lease losses, as a component of capital, may constitute no more than 1.5 percent of an institution's weighted risk assets and, at the end of the transition period and thereafter, no more than 1.25 percent of weighted risk assets.[4]

[1] An exception will continue to be made for goodwill acquired by state member banks in supervisory mergers with troubled or failed banks in which the Federal Reserve has given the bank permission to count goodwill for capital purposes.

[2] The Basle capital framework also provides for the inclusion of "undisclosed reserves" in Tier 2. As defined in the framework, undisclosed reserves represent accumulated after-tax retained earnings that are not disclosed on the balance sheet of a bank. Apart from the fact that these reserves are not disclosed publicly, they are essentially of the same quality and character as retained earnings and, to be included in capital, such reserves must be accepted by the banking organization's home supervisor. Although such undisclosed reserves are common in some countries, under generally accepted accounting principles and long-standing supervisory practice, these types of reserves are not recognized for banks and bank holding companies in the United States. Foreign banking organizations seeking to make acquisitions or conduct business in the United States would be expected to disclose publicly at least the degree of reliance on such reserves in meeting supervisory capital requirements.

[3] Allocated transfer risk reserves are reserves that have been established in accordance with Section 905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems.

[4] The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of gross risk weighted assets. A banking organization may deduct reserves for loan and lease losses in excess of the amount permitted to be included in capital, as well as allocated transfer risk reserves, from the gross sum of weighted risk assets and use the resulting net sum of weighted risk assets in computing the denominator of the risk-based capital ratio.

b. *Perpetual and long-term preferred stock.* Perpetual preferred stock is defined as preferred stock without a fixed maturity date *and* that cannot be redeemed at the option of the holder. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more. (If the holder has a right to redeem the instrument prior to the original stated maturity, maturity would be defined for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.) When long-term preferred stock has a remaining maturity of less than seven years, it should be treated for capital purposes as intermediate-term preferred stock and subject to the 50 percent of core capital limitation described below.

Perpetual preferred stock and long-term limited-life preferred stock would qualify for inclusion in capital provided that they can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer or reduce preferred dividends if dividends on common stock are eliminated or reduced. Given these conditions and the perpetual or long-term nature of the instruments, there is no limit on the amount of these instruments that may be included within Tier 2 capital.

c. *Hybrid capital instruments.* Hybrid capital instruments include long-term debt instruments that generally meet the requirements set forth below:

(1) The instrument must be unsecured; fully paid-up; and subordinated to general creditors and, if issued by a bank, also to depositors.

(2) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the Federal Reserve. (Consistent with the Board's criteria for perpetual debt and mandatory convertible securities, this requirement implies that holders of such instruments may not accelerate the payment of principal except in the event of bankruptcy, insolvency, or reorganization.)

(3) The instrument must be available to participate in losses while the issuer is operating as a going concern. (Straight term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument must convert to common or perpetual or long-term preferred stock in the event that the sum of retained earnings and capital surplus accounts of the issuer show a negative balance.

(4) The instrument must provide the option for the issuer to defer interest payments if: (a) The issuer does not report a profit in the preceding annual period (defined as combined profits for the most recent four quarters); *and* (b) the issuer eliminates cash dividends on common and preferred stock.

Perpetual debt and mandatory convertible securities that meet the criteria set forth in 12 CFR Part 225, Appendix A, will qualify as hybrid capital instruments for state member banks and bank holding companies. During the transition period, the Federal Reserve will review the criteria for mandatory convertible securities in light of the definitions contained in the Basle capital framework. As a result of this review, the Board may modify the mandatory convertible criteria as part of its overall program for implementing the risk-based capital ratio.

There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

d. *Subordinated debt and intermediate-term preferred stock.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as capital for risk-based capital purposes is limited to 50 percent of core capital. Subordinated debt and intermediate-term preferred stock must have an original average maturity of at least seven years to qualify as supplementary capital.[5] (If the holder has the option to redeem the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.) In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. To qualify as capital in banks, debt must be subordinated to depositors and general creditors; in bank holding companies, debt must be subordinated in right of payment to all senior indebtedness of the issuer. Consistent with current regulatory requirements, if a state member bank wishes to redeem subordinated debt before the stated maturity, it should receive prior approval of the Federal Reserve.

e. *Discount of supplementary capital instruments.* As a limited-life capital instrument approaches maturity, it begins to take on characteristics of a short-term obligation and becomes less like a component of capital. For this reason, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in Tier 2 would be adjusted downward, or discounted, as these instruments approach maturity. All such instruments would be discounted by reducing the outstanding amount of the capital instrument that would count as supplementary capital by a fifth of the original amount, less redemptions, each year during the instrument's last five years before maturity. Such instruments, or portions of such instruments, therefore, would have no capital value when they have a maturity of less than one year.

f. *Revaluation reserves.* The Basle capital framework addresses the role in capital of revaluation reserves with respect to bank premises and long-term holdings of equity securities. When recognized, these reserves result from the restatement of asset carrying values to reflect current market values. In the United States, banks and bank holding companies, for the most part, follow generally accepted accounting principles (GAAP) when preparing their financial statements, and GAAP generally does not permit the use of market-value accounting. For this and other reasons the Federal Reserve has generally not included unrealized asset values in capital ratio calculations; although it has long taken such values into account in assessing the overall financial strength of a banking organization.

The equivalent of revaluation reserves for state member banks and bank holding companies will not be formally recognized in supplementary capital or in the calculation of the risk-based capital ratio. However, all banking organizations are encouraged to disclose their equivalent of premises and equity revaluation reserves, and such values will be taken into account as additional factors in assessing overall capital adequacy and financial condition. For example, in the absence of any notable supervisory, financial, or operating problems, organizations with significant and reliable revaluation reserves may be permitted to operate closer to minimum supervisory capital ratios than organizations without such values.

B. Deductions from Capital and Other Adjustment

Certain assets are to be deducted from an organization's capital base for the purpose of calculating the numerator of the risk-based capital ratio.[6] These assets include:

(1) Goodwill—deducted from Tier 1—(See discussion below of limited grandfathering of bank holding company goodwill during the transition period);

(2) Investments in unconsolidated banking and finance subsidiaries and, on a case-by-case basis, investments in other subsidiaries or associated companies at the discretion of the Federal Reserve—deducted from the sum of Tier 1 and Tier 2; and

(3) Reciprocal holdings of capital instruments of banking organizations—deducted from the sum of Tier 1 and Tier 2.

1. *Goodwill and other intangible assets.* Goodwill is an intangible asset that represents the excess of the purchase price over the fair market value of net assets acquired in acquisitions accounted for under the purchase method of accounting.

a. *Bank holding company goodwill.* Any goodwill carried on the balance sheet of a bank holding company after December 31, 1992, should be deducted from the sum of core capital elements in determining Tier 1 capital. In addition, bank holding company goodwill acquired as a result of a merger or acquisition that is consummated on or after March 12, 1988, also will be deducted. For bank holding companies, any goodwill in existence before March 12, 1988, would be "grandfathered" during the transition period and would not be deducted from Tier 1 until December 31, 1992.

[5] Unsecured term debt issued by bank holding companies prior to March 12, 1988, and qualifying as secondary capital at the time of issuance would continue to qualify as capital under the risk-based framework, subject to the 50 percent of core capital limitation. Bank holding company term debt issued on or after March 12, 1988, must be subordinated in order to qualify as capital.

[6] Any assets deducted from capital in computing the numerator of the ratio would not be included in weighted risk assets in computing the denominator of the ratio.

b. *State member bank goodwill.* Since state member banks generally may not include goodwill in regulatory capital under current supervisory policies, all goodwill in state member banks will be deducted from Tier 1 capital immediately.[7]

c. *Other intangible assets.* The Federal Reserve is not proposing, as a matter of general policy, to deduct any other intangible assets from the capital of state member banks and bank holding companies at this time. The Federal Reserve, however, will continue to monitor closely the level and quality of other intangible assets—including purchased mortgage servicing rights, leaseholds, and core deposit value—and take them into account in assessing the capital adequacy of banking institutions. As with any other asset, banking organizations should review periodically the carrying value of intangible assets and make appropriate adjustments in carrying values or related amortization periods.

As a general rule, the Board believes that banking organizations should maintain strong tangible core capital bases in relation to weighted risk assets. While all intangible assets will be monitored, intangible assets (other than goodwill) that exceed 25 percent of core (Tier 1) capital will be subject to particularly close scrutiny. In addition, the Board will, on a case-by-case basis, continue to consider the level of an individual organization's tangible capital ratio (after deducting all intangible assets), together with the quality and value of the organization's intangible assets, in making an overall assessment of capital adequacy. Moreover, the Board intends to continue its policy of requiring banking organizations experiencing substantial growth internally and by acquisition to maintain strong capital positions that are substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. *Investments in certain subsidiaries*—a. *Unconsolidated banking or finance subsidiaries.* Any equity or debt capital investments in banking or finance subsidiaries [8] that are not consolidated under regulatory reporting requirements are to be deducted from an organization's total capital base, that is, from the sum of core capital and supplementary capital elements.[9] Inasmuch as the assets of *un*consolidated subsidiaries are not fully reflected in a banking organization's consolidated total assets, such assets may be viewed as the equivalent of off-balance sheet exposures since the operations of an unconsolidated subsidiary could expose the parent organization and its affiliates to considerable risk. For this reason, it is appropriate to view the capital invested in these unconsolidated entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks or additional leverage elsewhere in the organization.

b. *Other subsidiaries.* The deduction of equity and debt capital investments from the banking organization's capital may also be applied in the case of other subsidiaries, such as securities affiliates, that, while consolidated for accounting purposes, are not deemed to be consolidated for certain other purposes, such as to facilitate functional regulation of financial or other subsidiaries.

The Federal Reserve will not automatically deduct investments in other unconsolidated subsidiaries (such as those engaged in commercial activities) or investments in joint ventures and associated companies.[10] Nonetheless, the capital invested in these entities, like investments in unconsolidated banking and finance subsidiaries, supports assets not consolidated with the rest of the banking organization's activities and, therefore, may not be generally available to support additional leverage in the banking organization. Moreover, experience has shown that banking organizations stand behind the losses of affiliated institutions, such as joint ventures and associated companies, in order to protect the reputation of the organization as a whole. In some cases, this has led to losses that have exceeded the investments in such organizations.

For this reason, the Federal Reserve will monitor the level and nature of such investments for individual banking organizations and, on a case-by-case basis, may deduct such investments from capital, apply an appropriate risk-weighted capital charge against the organization's proportionate share of the assets of its associated companies, or otherwise require the organization to operate with a risk-based capital ratio above the minimum.

In considering the appropriateness of such adjustments or actions, the Federal Reserve will take into account whether:

(1) The subsidiary, joint venture, or associated company has a name similar to the banking organization;

(2) The banking organization has significant influence over the financial or managerial policies or operations of the affiliated company;

(3) The banking organization is the largest investor in the affiliated company; or

(4) Other circumstances prevail that appear to tie closely the activities of the affiliated company to the investing banking organization.

The Federal Reserve may, on a case-by-case basis, also deduct from capital debt and equity investments in certain *consolidated* subsidiaries in order to determine if the banking organization meets minimum supervisory capital requirements without reliance on the capital invested in the subsidiaries. In addition, the Board may, at some future date, seek public comment on the extension of this approach to all subsidiaries engaged in certain activities for the purpose of assessing the banking organization's consolidated capital position.

In general, when investments in a subsidiary are deducted from a banking organization's capital, the subsidiary's assets will also be excluded from the assets of the banking organization in order to assess the latter's capital adequacy.

3. *Reciprocal holdings of bank capital instruments.* Reciprocal holdings of banking organizations' capital instruments (that is, instruments that qualify as Tier 1 or Tier 2 capital) are to be deducted from an organization's total capital base for the purpose of determining the numerator of the risk-based capital ratio. Reciprocal holdings are cross-holdings resulting from formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. Generally, as this discussion implies, deductions would be limited to intentional cross-holdings. At present, the Board does not intend to require banking organizations to deduct non-reciprocal holdings of such capital instruments.[11] The Board, however, intends to monitor non-reciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee, as called for under the Basle capital framework.

III. Procedures for Computing Weighted Risk Assets and Offbalance Sheet Items Used in the Risk-Based Capital Ratio

A. Procedures

Balance sheet assets and credit equivalent amounts of off-balance sheet items of state member banks and bank holding companies are assigned to one of five broad risk categories. The aggregate dollar value of the amount in each category is then multiplied by the weight assigned to that category. The resulting weighted values from each of the five risk categories are added together and this sum is the weighted risk assets total that comprises the denominator of the risk-based capital ratio. Table I provides a sample calculation of this ratio.

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[7] An exception to this rule would be made for those state member banks that have acquired goodwill in connection with supervisory mergers with problem or failed banks and that have been permitted to include such goodwill in capital under current policy. Consistent with this approach, such state member banks would be allowed to continue to include goodwill in capital for risk-based capital purposes.

[8] For this purpose, a subsidiary generally is defined as any banking or finance company in which the reporting institution holds more than 50 percent of the outstanding common stock.

[9] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith. The requirements for consolidation are spelled out in the instructions to the commercial bank Consolidated Reports of Condition and Income (Call Report) and the Consolidated Financial Statements for Bank Holding Companies (Y-9C Report).

[10] The definition of such entities is contained in the instructions to the commercial bank Consolidated Reports of Condition and Income and the Consolidated Financial Statements for Bank Holding Companies. Under regulatory reporting procedures, associated companies and joint ventures generally are defined as companies in which the banking organization owns 20 to 50 percent of the voting stock.

[11] Deductions of holdings of capital securities also would not be made in the case of interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143. In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital.

Risk weights for all off-balance sheet items are determined by a two-step process. First, the "credit equivalent amount" of an off-balance sheet item is determined, in most cases, by multiplying the off-balance sheet item by a credit conversion factor. Second, the credit equivalent amount generally is assigned, like any balance sheet asset, to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.

B. Collateral, Guarantees, and Other Considerations

In determining the risk classification of various assets, the only forms of collateral that are formally recognized by the risk-based capital framework are cash on deposit in the lending institution; securities issued by, or guaranteed by, the U.S. Government or its agencies; and securities issued by, or guaranteed by, U.S. Government-sponsored agencies. The extent to which recognized securities may act as collateral is determined by their current market value. If a claim is partially collateralized, that is, the amount of cash or the market value of the securities serving as collateral is less than the face amount of a balance sheet asset or the credit equivalent amount of an off-balance sheet item, then the portion of the claim that is not collateralized is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor. The portion that is collateralized is assigned to the risk category that is associated with the collateral. For example, to the extent that an asset is collateralized by U.S. Government securities, it would be placed in the 10 percent risk category (regardless of the maturity of those securities). A claim secured by two types of collateral that the risk-based capital framework recognizes but places in different risk categories, such as cash and U.S. Government-sponsored agency securities, should be apportioned between the two risk categories according to the amounts of each of the two types of collateral securing the claim.

Guarantees of the U.S. Government and its agencies, U.S. Government-sponsored agencies, domestic state and local governments, and domestic depository institutions are also recognized. While not formally factored into the ratio, the existence of other forms of collateral or guarantees would be taken into account in evaluating the risks inherent in an organization's loan portfolio—which, in turn, would affect the overall supervisory assessment of the organization's capital adequacy. Maturity is generally not a factor in assigning items to risk categories with the exceptions of securities (direct obligations) of the U.S. Government or its agencies, claims on foreign banks, commitments, and interest rate and foreign exchange rate contracts.

Table III contains a listing of the risk categories, a summary of the types of assets to be included in each category and the weight assigned to each category, that is, 0 percent, 10 percent, 20 percent, 50 percent and 100 percent. A brief explanation of the components of each category follows.

C. Risk Weights

1. *Category I: Zero Percent.* This category includes cash (domestic and foreign) owned and held in all offices of a bank or in transit; claims on, and balances due from, Federal Reserve Banks; and, in light of their near-cash characteristics, direct securities issued by the U.S. Government or its agencies excluding any short-term loans guaranteed by the U.S. Government or collateralized by short-term Government debt with a *remaining* maturity of 91 days or less.[12]

2. *Category II: 10 Percent.* This category includes direct securities issued by the U.S. Government or its agencies with a remaining maturity of over 91 days; all other claims (including leases) on the U.S. Government or its agencies; all securities and portions of loans guaranteed by the U.S. Government or its agencies; and claims (including repurchase agreements) collateralized by cash on deposit in the lending institution or by securities issued by, or guaranteed by, the U.S. Government or its agencies.

The book value of paid-in stock of a Federal Reserve Bank is also assigned to Category 2.

3. *Category III: 20 Percent.* This category includes short-term claims (including demand deposits) on domestic depository institutions [13] and foreign banks [14] (including foreign central banks); cash items in the process of collection, both foreign and domestic; local currency claims on foreign central governments to the extent that a bank has local currency liabilities booked in the foreign country; long-term (original maturity of more than one year) claims on domestic depository institutions; [15] and portions of loans or other claims guaranteed by domestic depository institutions.[16]

This category also includes claims on, or portions of claims guaranteed by, U.S. Government-*sponsored* agencies [17] and portions of claims collateralized by securities issued by, or guaranteed by, U.S. Government-sponsored agencies. Claims on multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member, as well as general obligation claims on, or portions of claims guaranteed by, the full faith and credit of states or other political subdivisions of the United States, are also assigned to this category.

4. *Category IV: 50 percent.* This category includes *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the United States, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Also included in this category are credit equivalent amounts of interest rate and foreign exchange rate contracts involving standard risk obligors, not backed by collateral or guarantees that would allow them to be placed in lower risk weight categories, as noted below in the discussion of interest rate and foreign exchange rate contracts.

5. *Category V: 100 Percent.* All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category. Such assets include long-term claims (over one year) on foreign banks, as well as all non-local currency claims on foreign governments and local currency claims on a foreign central government that exceed local currency liabilities held by the bank in the foreign country, that is, all claims on foreign governments that entail some degree of transfer risk.

This category also includes all claims on foreign and domestic private sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims; [18] investments in fixed

[12] For this purpose, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government. These include the Government National Mortgage Association (GNMA), the Veterans Administration (VA), the Federal Housing Administration (FHA), the Export-Import Bank (EXIM Bank), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA).

[13] Domestic depository institutions are defined to include branches (foreign and domestic) of federally-insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks. U.S. chartered depository institutions owned by foreigners are also included in the definition; however, branches and agencies of foreign banks located in the U.S. and bank holding companies are excluded.

[14] Foreign banks are defined as institutions that are organized under the laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business; and have the power to accept demand deposits. Claims on foreign banks include claims on the U.S. branches and agencies of foreign banks.

[15] Claims on foreign banks with an original maturity exceeding one year and all claims on bank holding companies are assigned to Category V, which carries a weight of 100 percent.

[16] These include risk participations in bankers acceptances and in any standby letters of credit, as well as participations in commitments conveyed to other domestic banks.

[17] For this purpose, U.S. Government-*sponsored* agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA).

[18] Customer liabilities on acceptances outstanding involving non-standard risk claims.

Continued

assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; and commercial and consumer loans, including all residential mortgage loans (except those assigned to lower risk categories due to recognized guarantees or collateral). The following assets also are to be converted at 100 percent if they have not been deducted from capital: Investments in unconsolidated companies, joint ventures or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including grandfathered goodwill. Also included in this category are industrial development bonds and similar obligations issued under auspices of states or political subdivisions of the United States for the benefit of a private party or enterprise where that party or enterprise, not the government, is obligated to pay the principal and interest.

D. Off-Balance Sheet Items

The face amount of an off-balance sheet item is generally multiplied by a credit conversion factor and the resulting credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral. Table IV sets forth the conversion factors for various types of off-balance sheet items.

1. *Items With a 100 Percent Conversion Factor.* A 100 percent conversion factor applies to direct credit substitutes, which include guarantees or equivalent instruments, backing financial claims, such as outstanding securities, loans, and other financial liabilities, or backing off-balance sheet items that require capital under the risk-based capital framework. For example, these direct credit substitutes include standby letters of credit, other equivalent irrevocable obligations, or surety arrangements, that guarantee repayment of commercial paper, tax-exempt securities, commercial or individual loans, debt obligations, or commercial letters of credit. They also include the acquisition of risk participations in bankers acceptances and standby letters of credit, since both of these transactions, in effect, constitute a guarantee by the acquiring banking institution that the underlying account party (obligor) will repay its obligation to the originating, or issuing, institution. (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

In the case of direct credit substitutes that are participated out in the form of a syndication (that is, where each bank is responsible only for its *pro rata* share of the risk and there is no recourse to the originating bank), participated portions would be excluded entirely from the originating bank's weighted risk assets. A banking organization that has conveyed risk participations [19] in a direct credit substitute, such as a standby letter of credit, to a third party should convert the full amount of the direct credit substitute at 100 percent without deducting the risk participations conveyed. Then, those portions of the credit equivalent amount of the direct credit substitute that have been conveyed as risk participations to domestic depository institutions should be assigned to the risk category appropriate to claims guaranteed by domestic depository institutions, that is, 20 percent, rather than to the category appropriate to the account party obligor. This treatment is accorded to these conveyances because they replace, to the extent of the participation or conveyance, the originating bank's exposure to the account party obligor with an exposure to a domestic depository institution. A bank acquiring a risk participation in such a direct credit substitute or bankers acceptance should convert the amount of the acquisition at 100 percent and then assign the credit equivalent amount to the risk weight category appropriate to the account party obligor.

Standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute) or *fails to perform* some other contractual obligation (performance bond). A loan commitment, on the other hand, involves an obligation (with or without a material adverse change clause) of the banking organization to fund its customer *in the normal course* of business should the customer seek to draw down the commitment.

The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the notion that funding is triggered by some failure to repay or perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or *fails to perform* a contractual obligation would be treated for risk-based capital purposes as, respectively, a financial guarantee standby letter of credit or a performance standby.

Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet, as well as forward agreements, also are to be converted at 100 percent.

The risk-based capital definition of the sale of assets with recourse, including the sale of one-to-four family residential mortgages, is the same as the definition contained in the instructions to the commercial bank Consolidated Reports of Condition and Income. So-called "loan strips" (that is, short-term advances sold under long-term commitments) sold without direct recourse are accorded the same treatment as assets sold with recourse. Forward agreements are legally binding agreements (contractual obligations) to purchase assets with *certain* drawdown at a specified future date. These obligations include forward purchases, forward forward deposits, and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

2. *Items with a 50 Percent Conversion Factor.* Transaction-related contingencies are to be converted at 50 percent. Such contingencies include bid bonds, performance bonds, warranties, standby letters of credit related to particular transactions, and performance standby letters of credit, as well as acquisitions of risk participations in such standby letters of credit. Performance standby letters of credit represent obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

The unused portion of commitments with an *original* maturity exceeding one year, including underwriting commitments, and commercial and consumer credit commitments also are to be converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which the following two conditions hold: (1) The bank can, at its option, unconditionally (without cause) cancel the commitment; and (2) the bank is scheduled to (and as a normal practice actually does) review the facility to determine whether or not it should be extended. Facilities that are unconditionally cancellable (without cause) at any time by the bank are not deemed to be commitments, provided the bank makes a separate credit decision before each drawing under the facility. Commitments with an original maturity of one year or less are deemed to involve low risk and, therefore, are not assessed a capital charge. Such short-term commitments are defined to include unused lines of credit on retail credit cards that a bank can unconditionally cancel at any time.

Commitments are defined as any legally binding arrangements that obligate a banking organization to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, or similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions.

In the case of commitments structured as syndications, the risk asset framework includes only the banking organization's proportional share of such commitments. After a commitment has been converted at 50

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such as claims on domestic depository institutions, are to be assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to domestic depository institutions should be assigned to the 20 percent risk category appropriate to claims guaranteed by domestic depository institutions.

[19] That is, participations in which the originating banking institution remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

percent, portions that have been conveyed to other domestic depository institutions as participations in which the originating banking organization retains the full obligation to the borrower if the participating bank fails to pay when the instrument is drawn, would be assigned to the 20 percent risk category. This treatment is analogous to that accorded the conveyances of risk participations in standby letters of credit. The acquisition of such a participation would be converted at 50 percent and assigned to the risk category appropriate to the account party obligor.

Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements also are converted at 50 percent. These are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting organizations have a legally binding commitment either to purchase any notes the borrower is unable to sell by the roll-over date or to advance funds to the borrower.

3. *Items with a 20 Percent Conversion Factor.* Short-term, self-liquidating trade-related contingencies which arise from the movement of goods are converted at 20 percent. Such contingencies include commercial letters of credit and other documentary letters of credit collateralized by the underlying shipments.

4. *Items with a Zero Percent Conversion Factor.* These include unused commitments with an original maturity of one year or less. Unused retail credit card lines are deemed to be short-term commitments if the bank has the unconditional option to cancel the card at any time.

E. Interest Rate and Foreign Exchange Rate Contracts

1. *Scope.* Credit equivalent amounts are to be computed for each of the following off-balance sheet interest rate and foreign exchange rate instruments:

a. Interest Rate Contracts:

—Single currency interest rate swaps.
—Basis swaps.
—Forward rate agreements.
—Interest rate options purchased (including caps, collars, and floors purchased).
—Any other instrument that gives rise to similar credit risks (including when-issued securities).

b. Exchange Rate Contracts:

—Cross-currency interest rate swaps.
—Forward foreign exchange contracts.
—Currency options purchased.
—Any other instrument that gives rise to similar credit risks.

Over-the-counter options purchased would be treated in the same way as the other interest rate and exchange rate contracts. That is, the credit equivalent amount would be the sum of the marked-to-market replacement cost and the "add-on" amount for potential future exposure. Exchange rate contracts with an original maturity of seven days or less and instruments traded on exchanges that require daily payment of variation margin are excluded.

2. *Calculation of Credit Equivalent Amounts.* Credit equivalent amounts are to be calculated for each individual contract of the types listed above. To calculate the credit equivalent amount of its off-balance sheet interest rate and exchange rate instruments, a banking organization should, for each contract, sum:

a. The mark-to-market value (positive values only) of the contract (that is, its current exposure) [20] and;

b. An estimate of the potential future increases in credit exposure over the remaining life of the instrument.

Potential exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market values, by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
Less than one year	0	1.0
One year and over	0.5	5.0

Examples of the calculation of credit equivalent amounts for these instruments are contained in Table V.

Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange contracts than for interest rate contracts.

No potential future credit exposure should be calculated for single currency floating/floating interest rate swaps; the credit exposure on these contracts should be evaluated solely on the basis of their mark-to-market value.

3. *Risk Weights.* Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount should be assigned to a risk weight category according to the identity of the counterparty or, if relevant, the nature of collateral or guarantees. In accordance with the Basle capital framework, however, the maximum weight applied to the credit equivalent amount currently is 50 percent. The Federal Reserve intends to monitor the quality of credits in the interest rate and exchange rate markets and, in the future, would consider, if appropriate, assigning credit equivalent amounts for contracts involving standard risk obligors to the 100 percent risk category, as is the case with other off-balance sheet instruments.

4. *Accounting.* In certain cases, credit exposures arising from the interest rate and exchange instruments covered by these guidelines may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating banking organizations' total weighted risk asset ratios. The Federal Reserve will address this issue in designing appropriate reporting systems.

In accordance with the terms of the Basle capital framework, netting of swaps and similar contracts will not be recognized for purposes of calculating the risk-based ratio at this time. While the Federal Reserve encourages any reasonable arrangements designed to reduce the risks inherent in these transactions, the Basle Supervisors' Committee felt that the legal issues posed by netting arrangements require further consideration prior to the implementation of a netting mechanism on an international basis.

IV. Target Ratio Standard

A. Minimum Risk-Based Ratio After Transition Period

As reflected in Table VI, by year-end 1992, all bank holding companies [21] and state member banks should meet a *minimum* ratio of total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of core capital (Tier 1).[22] Core capital is defined as the sum of common stockholders' equity (including retained earnings and any minority interest in the common stockholders' equity accounts of consolidated subsidiaries) minus any goodwill carried on an organization's balance sheet.[23]

The maximum amount of supplementary (Tier 2) capital elements that would qualify as capital is limited to 100 percent of the total amount of core capital, that is, the sum of Tier 1 capital components (net of goodwill). Within Tier 2, the maximum amount of the allowance for loan and lease losses that would qualify as Tier 2 capital is limited to 1.25 percent of weighted risk assets. In addition, the combined maximum amount of subordinated debt and intermediate-term preferred stock that qualifies as Tier 2 capital is limited to 50 percent of Tier 1 capital.

Total capital is calculated by adding core capital (defined to exclude goodwill) to supplementary capital (limited to 100 percent of core capital) and then deducting from this sum any capital investments in unconsolidated banking and finance subsidiaries, reciprocal holdings of banking organization capital securities, or other items at the direction of the Federal Reserve.

B. Transitional Arrangements

The transition period, intended to facilitate implementation of the risk-based capital ratio, ends on December 31, 1992. The transitional arrangements include an interim target risk-based capital ratio to be met by year-end 1990. Any organization not meeting the interim target or final supervisory ratios

[20] Mark-to-market values should be measured in dollars, regardless of the currency or currencies specified in the contract.

[21] As noted above, bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated basis.

[22] Section II contains definitions of capital-related terms used in this section.

[23] Goodwill that state member banks are permitted to include in capital as a result of supervisory mergers with troubled or failed banking organizations would not be deducted.

would be expected to develop and discuss with the Federal Reserve a plan setting forth how the organization intends to reach the minimum supervisory ratios.

1. *Initial Arrangements.* No formal risk-based capital minimum level will be set initially. However, any organization that has a risk-based ratio of less than 8 percent is expected to undertake a sustained effort to move in the direction of that target during the transition period. Banking organizations with ratios of 8 percent or lower should not make adjustments to their risk profiles or undertake growth plans that would lower their ratios.

While the Basle capital framework does not establish an initial standard for the minimum level of capital during this period, it does permit the core capital of an organization to include some limited supplementary capital elements. Specifically, a maximum of 25 percent of core capital (before any deduction of goodwill) may consist of supplementary capital elements, with the remainder consisting of common stockholders' equity. By year-end 1990, banking organizations would be expected to reduce the amount of supplementary capital included in core capital to no more than 10 percent of core capital.

For bank holding companies, any goodwill acquired before March 12, 1988, would be grandfathered until year-end 1992. Goodwill acquired by holding companies on or after March 12, 1988, and all goodwill on holding company books after year-end 1992, would be deducted from Tier 1 capital components to compute core capital.

State member banks are generally not permitted to recognize goodwill on their balance sheets or to include goodwill for capital purposes under current policies. Thus, all goodwill in state member banks would be deducted immediately from Tier 1 components to determine core capital, except for goodwill acquired and approved in connection with supervisory mergers with troubled or failed banks.

Initially, the allowance for loan and lease losses may be included in an organization's supplementary capital without limit. However, by year-end 1990, loan loss reserves counted in supplementary capital may not exceed 1.5 percent of weighted risk assets.

The existing supervisory capital-to-*total* assets ratios, as outlined in Appendix A (the leverage measure) of the Capital Adequacy Guidelines, would continue to be employed during this initial period. The Board will, prior to year-end 1990, consider whether a maximum leverage ratio will continue to be employed in conjunction with the implementation of the risk-based standard. If a maximum leverage ratio is employed after year-end 1990, the Board may, after appropriate consideration, adopt definitions of capital for leverage purposes that are consistent with the definitions in the risk-based capital guidelines.

2. *Year-end 1990 through year-end 1992.* By year-end 1990, banking organizations would be expected to meet a minimum interim target ratio for total capital to weighted risk assets of 7.25 percent, at least one-half of which should be in the form of core capital. In addition, as noted above, during this period up to 10 percent of an organization's core capital (before any deduction for goodwill) may consist of supplementary capital elements. Thus, the 7.25 percent interim target ratio implies a minimum ratio of core capital to weighted risk assets of 3.6 percent (one-half of 7.25) and a minimum common stockholders' equity to weighted risk assets ratio of 3.25 percent (nine-tenths of the core capital ratio). By year-end 1992, an organization's required core capital must consist *solely* of common stockholders' equity, including minority interest in common equity accounts of consolidated subsidiaries.

The maximum amount of the allowance for loan and lease losses reserves that may qualify as supplementary capital will be limited to 1.5 percent of weighted risk assets (that is, 1.5 percentage points of the minimum required total of 7.25 percent), declining to 1.25 percent by year-end 1992. Allowances for loan and lease losses in excess of these limits may, of course, be maintained, but would not be included in an organization's total capital base. The Federal Reserve will continue to require banks and bank holding companies to maintain reserves at levels fully sufficient to cover losses inherent in their loan portfolios.

TABLE I.—SAMPLE CALCULATION OF RISK-BASED CAPITAL RATIO

Example of a bank with $6,000 in total capital and the following assets and off-balance sheet items:	
Balance Sheet Assets:	
Cash	$10,000
Long-term U.S. Government securities	20,000
Balances at domestic banks	5,000
Loans to private corporations	65,000
Total Balance Sheet Assets	$100,000
Off-Balance Sheet Items	
Standby letters of credit ("SLCs") backing general obligation debt issues of U.S. municipalities ("GOs")	$10,000
Long-term commitments to private corporations	20,000
Total Off-Balance Sheet Items	$30,000
This bank's total capital to *total* assets ratio would be: ($6,000/$100,000)=6.00%.	

OBS Item	Face Value		Conversion Factor		Credit Equivalent Amount
To compute the bank's weighted risk assets:					
1. Compute the credit equivalent amount of each off-balance sheet ("OBS") item.					
SLC's backing municipal GO's	$10,000	×	1.00	=	$10,000
Long-term commitments to private corporations	$20,000	×	0.50	=	$10,000
2. Multiply each balance sheet asset and the credit equivalent amount of each OBS item by the appropriate risk weight.					
0% Category: Cash	$10,000	×	0	=	$0
10% Category: Long-term U.S. Government securities	$20,000	×	0.10	=	$2,000
20% Category:					
Balances at domestic banks	$5,000				
Credit equivalent amounts of SLC's backing GO's of U.S. municipalities	$10,000				
Total	$15,000	×	0.20	=	$3,000
50% Category: No items.					
100% Category:					
Loans to private corporations	$65,000				
Credit equivalent amounts of long-term commitments to private corporations	$10,000				

OBS Item	Face Value		Conversion Factor		Credit Equivalent Amount
Total	$75,000	×	1.00	=	$75,000
Total Risk-Weighted Assets					$80,000
This bank's *risk-based* capital ratio would be: ($6,000/$80,000) = 7.50%.					

TABLE II. DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1)	Must equal or exceed 4% of weighted risk assets.
Common stockholders' equity.	No limit.
Minority interest in common equity accounts of consolidated subsidiaries.	No limit.
Less: Goodwill and other disallowed intangibles [1].	
Supplementary Capital (Tier 2).	Total of Tier 2 is limited to 100% of Tier 1.[2]
Allowance for loan and lease losses.	Limited to 1.25% of weighted risk assets.[2]
Perpetual and long-term preferred stock (original maturity 20 yrs. or more).	No limit within Tier 2, long-term preferred is amortized for capital purposes as it approaches maturity.
Hybrid capital instruments (including perpetual debt and mandatory convertible securities).	No limit within Tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 7 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1 [2]; amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building).	Not included; regulators would encourage banks to disclose; would evaluate on case-by-case basis for international comparisons; and would take into account in making overall assessment of capital.
Deductions (from sum of Tier 1 and Tier 2):	
Investments in unconsolidated banking and finance subsidiaries.	
Reciprocal holdings of bank issued capital securities.	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On case-by-case basis or as matter of policy after formal rulemaking.
Total Capital (Tier 1 + Tier 2—Deductions).	Must equal or exceed 8% of weighted risk assets.

[1] Goodwill on books of bank holding companies before march 12, 1988, would be "grandfathered" for transition period. All goodwill and disallowed intangibles in banks, except previously grandfathered intangibles or goodwill approved in supervisory mergers, would be deducted immediately as under current policies. All deductions are for capital adequacy purposes only; deductions would not affect accounting treatment.

[2] Amounts in excess of limitations are permitted but do not qualify as capital.

Table III.—Summary of Risk Weights and Risk Categories

Category 1: Zero percent

1. Cash (domestic and foreign).
2. Balances due from, and claims on, Federal Reserve Banks.
3. Securities (direct obligations) issued by the U.S. Government or its agencies [1] with a remaining maturity of 91 days or less.

Category 2: 10 percent

1. Securities issued by the U.S. Government or its agencies* with remaining maturities of over 91 days and all other claims (loans and leases) on the U.S. Government or its agencies*.
2. Securities and other claims guaranteed by the U.S. Government or its agencies (including portions of claims guaranteed).
3. Portions of loans and other assets collateralized [2] by securities issued by, or guaranteed by, the U.S. Government or its agencies, or by cash on deposit in the lending institution.
4. Federal Reserve Bank stock.

Category 3: 20 percent

1. All claims (long- and short-term) on domestic depository institutions.
2. Claims on foreign banks with an original maturity of one year or less.
3. Claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions.
4. Local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country.
5. Cash items in the process of collection.
6. Securities and other claims on, or guaranteed by U.S. Government-*sponsored* agencies (including portions of claims guaranteed).[3]
7. Portions of loans and other assets collateralized [4] by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.
8. General obligation claims on, and claims guaranteed by, U.S., state and local governments that are secured by the full faith and credit of the state or local taxing authority (including portions of claims guaranteed).
9. Claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.

Category 4: 50 Percent

1. Revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. state or local governments, but for which the government entity is committed to repay the debt only out of revenues from the facilities financed.
2. Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category.

Category 5: 100 Percent

1. All other claims on private obligors.
2. Claims on foreign banks with an original maturity exceeding one year.
3. Claims on foreign central governments that are not included in item 4 of Category 3.
4. Obligations issued by state or local governments (including industrial development authorities and similar entities) repayable solely by a private party or enterprise.
5. Premises, plant, and equipment; other fixed assets; and other real estate owned.
6. Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital.
7. Instruments issued by other banking organizations that qualify as capital.
8. All other assets (including claims on commercial firms owned by the public sector).

[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[2] Degree of collateralization is determined by current market value.

[3] For the purpose of calculating the risk-based capital ratio, a U.S. Government-*sponsored* agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

Table IV.

Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

1. Direct credit substitutes (general guarantees of indebtedness and guarantee-type instruments, including standby letters of credit serving as financial guarantees for, or supporting, loans and securities).
2. Acquisitions of risk participations in bankers acceptances and participations

[4] Degree of collaterization is determined by current market value.

in direct credit substitutes (e.g., standby letters of credit).

3. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.
4. Forward agreements (that is, contractual obligations) to purchase assets, including financing facilities with *certain* drawdown.

50 Percent Conversion Factor

1. Transaction-related contingencies (e.g., bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction).
2. Unused commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.
3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

20 Percent Conversion Factor

1. Short-term, self-liquidating trade-related contingences, including commercial letters of credit.

Zero Percent Conversion Factor

1. Unused commitments with an original maturity of one year or less or which are unconditionally cancellable at any time.

Credit Conversion for Interest Rate and Foreign Exchange Contracts

The Total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) would be added to a measure of future potential increases in credit exposure. This future potential exposure measure would be calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining Maturity	Interest rate contracts	Exchange rate contracts
Less than one year	0	1.0%
One year and over	0.5%	5.0%

No potential exposure would be calculated for single currency floating/floating interest rate contracts; the credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

TABLE V. CALCULATION OF CREDIT EQUIVALENT AMOUNTS

[Interest Rate and Foreign Exchange Rate Related Transactions]

Type of contract (remaining maturity)	Potential exposure						Current exposure			Credit equivalent amount
	National principal (1)	x	Potential exposure conversion factor (2)	=	Potential exposure (dollars) (3)	+	Replacement cost [1] (4)	Current exposure (dollars) [2] (5)	=	
(1) 120-day forward foreign exchange	$5,000,000		0.01		50,000		100,000	100,000		$150,000
(2) 120-day forward foreign exchange	6,000,000		.01		60,000		−120,000	0		60,000
(3) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		200,000	200,000		250,000
(4) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		−250,000	0		50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000		.05		1,000,000		−1,300,000	0		1,000,000
Total	51,000,000									$1,510,000

[1] These numbers are purely for illustration.
[2] The larger of zero or a positive mark-to-market value.

TABLE VI

	Transitional arrangements		Final arrangement: Year-End 1992
	Initial	Year-End 1990	
1. Minimum standard of total capital to weighted risk assets.	None	7.25%	8.0%.
2. Definition of tier 1 capital	Common equity *plus* supplementary elements [1] *less* goodwill and other disallowed intangibles.[2].	Common equity *plus* supplementary elements [3] *less* goodwill and other disallowed intangibles.[2].	Common equity *less* goodwill and other disallowed intangibles.
3. Minimum standard of tier 1 capital to weighted risk assets.	None	3.625%	4.0%.
4. Minimum standard of common stockholders' equity to weighted risk assets.	None	3.25%	4.0%.
5. Limitations on supplementary capital elements.			
a. Allowance for loan and lease losses.	No limit within supplementary capital	1.5% of weighted risk assets	1.25% of weighted risk assets.
b. Subordinated debt and intermediate term preferred stock.	Combined maximum of 50% of tier 1	Combined maximum of 50% of tier 1	Combined maximum of 50% of tier 1.
c. Total qualifying supplementary capital.	May not exceed tier 1 capital	May not exceed tier 1 capital	May not exceed tier 1 capital.
6. Definition total capital	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.

[1] Up to 25% of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.
[2] See the Notice of Proposed Guidelines and the actual text of the proposed guidelines for discussion of relevant definitions and grandfathering arrangements for goodwill.
[3] Up to 10% of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.

Board of Governors of the Federal Reserve System, effective March 1, 1988.

William W. Wiles,

Secretary of the Board.

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 3907, 3909.

2. The Federal Deposit Insurance Corporation proposes to amend Part 325 by adding an Appendix A to Part 325 to read as follows:

Appendix A—Statement of Policy on Risk-Based Capital

Capital adequacy is one of the critical factors that the FDIC is required to analyze when taking action on various types of applications and when conducting various supervisory activities related to the safety and soundness of individual banks and the banking system. In view of this, the FDIC's Board of Directors adopted a capital regulation in February of 1985 that set forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is in an unsafe or unsound condition by reason of the amount of its capital (50 FR 11128) (1985)).

This regulation, contained in Part 325 of the FDIC's rules and regulations, was designed to establish, in conjunction with other Federal bank regulatory agencies, uniform capital standards for all federally-regulated banking organizations, regardless of size. These uniform capital standards are based on ratios of primary and total capital to total assets.

While these leverage ratios have served as a useful tool for assessing capital adequacy, the FDIC believes there is a need for a capital measure that is more explicitly and systematically sensitive to the risk profiles of individual banking organizations. As a result, the FDIC's Board of Directors has adopted this Statement of Policy on Risk-Based Capital.

The framework set forth in this statement of policy consists of (1) a definition of capital for risk-based capital purposes, (2) a system for calculating risk-weighted assets by assigning assets and off-balance sheet items to risk categories, and (3) a schedule, which includes transitional arrangements during a phase-in period, for achieving a minimum supervisory target ratio of capital to risk-weighted assets. An institution's risk-based capital ratio is calculated by dividing its qualifying capital base (the numerator of the ratio) by its risk-weighted assets (the denominator).

This statement of policy applies to all FDIC-insured state-chartered banks (excluding insured branches of foreign banks) that are not members of the Federal Reserve System, hereafter referred to as "state nonmember banks," regardless of size, and to all circumstances in which the FDIC is required to evaluate the capital of a banking organization. Therefore, the risk-based capital framework set forth in this statement of policy will be used in the examination and supervisory process as well as in the analysis of applications that the FDIC is required to act upon. Generally, banking organizations are expected to operate above the minimum target risk-based capital ratio and those institutions with high or inordinate levels of risk should hold capital commensurate with their risk profiles.

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect an organization's financial condition. These factors include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control other financial and operating risks.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets. For this reason, the final supervisory judgment on an organization's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

I. Definition of Capital for the Risk-Based Capital Ratio

An institution's qualifying capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). These capital elements and the various limits, restrictions, and deductions to which they are subject are discussed below.

A. The Components of Qualifying Capital

1. *Core capital elements (Tier 1) consist of:*

—Common stockholders' equity capital (includes common stock, surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments);

—Minority interests in the common stockholders' equity capital accounts of consolidated subsidiaries; and

—Supplementary capital elements (during the transition period only, and subject to certain limitations set forth in section III below).

At least 50 percent of the qualifying capital base of a state nonmember bank should consist of core capital. Core capital is defined as the sum of core capital elements minus all intangible assets other than mortgage servicing rights.[1]

2. *Supplementary capital elements (Tier 2)* consist of:

—Allowances for loan and lease losses (subject to limitations discussed below);

—Perpetual and long-term preferred stock (original maturity of at least 20 years);

—Hybrid capital instruments, including mandatory convertible securities; and

—Term subordinated debt and intermediate-term preferred stock (original average maturity of seven years or more).

The definition of supplementary capital does *not* include revaluation reserves or hidden reserves that represent unrealized appreciation on such assets as bank premises and equity securities. Although such reserves will not be explicitly recognized when calculating a state nonmember bank's risk-based capital ratio, these reserves may be taken into account as additional factors when assessing a banking organization's overall capital adequacy.

The maximum amount of supplementary elements that may be recognized for risk-based capital purposes is limited to 100 percent of core capital (after any deductions for disallowed intangibles). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of supplementary capital for risk-based capital purposes is limited to 50 percent of core capital. Amounts in excess of these limits may be issued but are not included in the calculation of the risk-based capital ratio.

Allowance for loan and lease losses. Allowances for loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves," [2] and reserves created against identified losses or earmarked for a specific asset.

This risk-based capital framework provides a phasedown during the transition period of the extent to which the allowance for loan and lease losses may be included in an institution's capital base. Initially, no limit will apply to these reserves. However, by year-end 1990, the allowance for loan and lease losses, as a component of supplementary capital, may constitute no more than 1.5 percent of risk-weighted assets and, by year-end 1992, no more than 1.25 percent of risk-weighted assets.[3]

[1] An exception will continue to be allowed for intangible assets that have been explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that were specifically approved by the FDIC.

[2] Allocated transfer risk reserves are reserves that have been established in accordance with section 905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems.

[3] The amount of the allowance for loan and lease losses that may be included in supplementary capital is based on a percentage of gross risk-weighted assets. A banking organization may deduct reserves for loan and lease losses that are in excess of the amount permitted to be included in capital, as well as allocated transfer risk reserves, from the sum of risk-weighted assets when computing the denominator of the risk-based capital ratio.

Perpetual and long-term preferred stock. Perpetual preferred stock is defined as preferred stock without a fixed maturity date *and* that cannot be redeemed at the option of the holder. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more. When long-term preferred stock has a remaining maturity of less than seven years, it should be treated for risk-based capital purposes as intermediate-term preferred stock, which is discussed below.

Perpetual preferred stock and long-term preferred stock qualify for inclusion in supplementary capital provided that the instruments can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer or reduce preferred dividends if dividends on common stock are eliminated or reduced. Given these conditions, and the perpetual or long-term nature of the instruments, there is no limit on the amount of these preferred stock instruments that may be included within Tier 2 capital.

Hybrid capital instruments. Hybrid capital instruments include long-term debt instruments that generally meet the requirements set forth below:

(1) The instrument should be unsecured, subordinated to depositors and general creditors, and fully paid-up.

(2) The instrument should not be redeemable at the option of the holder prior to maturity, except with the prior approval of the FDIC.

(3) The instrument should be available to participate in losses while the issuer is operating as a going concern. (Straight term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument should convert to common or perpetual preferred or long-term preferred stock in the event that the sum of the undivided profits and capital surplus accounts of the issuer results in a negative balance.

(4) The instrument should provide the option for the issuer to defer interest payments if: (a) The issuer does not report a profit in the preceding annual period, defined as combined profits (i.e., net income) for the most recent four quarters, *and* (b) the issuer eliminates cash dividends on common *and* preferred stock.

Mandatory convertible securities that meet the criteria set forth in 12 CFR 325.2(e) will qualify as hybrid capital instruments for state nonmember banks. There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

Term subordinated debt and intermediate-term preferred stock. The aggregate amount of term subordinated debt (excluding mandatory convertible securities) and intermediate-term preferred stock that may be treated as supplementary capital for risk-based capital purposes is limited to 50 percent of core capital. Term subordinated debt and intermediate-term preferred stock should have an original average maturity of at least seven years to qualify as supplementary capital.

In the case of subordinated debt, the instrument should be unsecured, subordinated to all depositors and general creditors, and clearly state on its face that it is not a deposit and is not insured by the Federal Deposit Insurance Corporation. To qualify as supplementar capital, such instruments issued by state nonmember banks should also meet the criteria for subordinated debt set forth in 12 CFR 325.2(j).

Discount of supplementary limited-life capital instruments. As a limited-life capital instrument approaches maturity, the instrument begins to take on characteristics of a short-term obligation and becomes less like a component of capital. Therefore, for risk-based capital purposes, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in Tier 2 will be adjusted downward, or discounted, as the instruments approach maturity. Each limited-life capital instrument will be discounted by reducing the outstanding amount of the capital instrument eligible for inclusion as supplementary capital by a fifth of the original amount (less redemptions) each year during the instrument's last five years before maturity. Such instruments, therefore, will have no capital value when they have a remaining maturity of less than a year.

B. Deductions From Capital and Other Adjustments

Certain assets are deducted from an organization's capital base for the purpose of calculating the numerator of the risk-based capital ratio.[4]

These assets include:

(1) All intangible assets other than mortgage servicing rights.[5] These disallowed intangibles are deducted from the core capital (Tier 1) elements.

(2) Investments in *unconsolidated* banking and finance subsidiaries.[6] This includes any equity or debt capital investments in banking or finance subsidiaries if the subsidiaries are not consolidated for regulatory capital requirements. These investments are deducted from the banking organization's total (Tier 1 plus Tier 2) capital base.

The FDIC may also deduct certain investments in nonbanking or nonfinancial subsidiaries. Investments by state nonmember banks in securities subsidiaries established pursuant to 12 CFR 337.4 will be deducted from capital for risk-based capital purposes. The FDIC may also consider deducting other investments in subsidiaries, either on a case-by-case basis or, as with securities subsidiaries, based on the general characteristics or functional nature of the subsidiaries.

(3) Reciprocal holdings of capital instruments of banking organizations that represent intentional cross-holdings by the banking organizations. These holdings are deducted from the banking organization's total capital base.

II. Procedures for Computing Risk-Weighted Assets

Under the risk-based capital framework, a banking organization's balance sheet assets and credit equivalent amounts of off-balance sheet items are assigned to one of five broad risk categories. The aggregate dollar amount in each category is then multiplied by the risk weight assigned to that category. The resulting weighted values from each of the five risk categories are added together and this sum is the risk-weighted assets total that, as adjusted, comprises the denominator of the risk-based capital ratio.

Risk weights for all off-balance sheet items are determined by a two-step process. First, the notional principal, or face value, amount of each off-balance sheet item generally is multiplied by a credit conversion factor to arrive at a balance sheet "credit equivalent amount." Second, the credit equivalent amount generally is assigned to the appropriate risk category, like any balance sheet asset, according to the obligor or, if relevant, the guarantor or the nature of the collateral.

In determining risk weights of various assets, the only forms of *collateral* that are formally recognized by the risk-based capital framework are cash on deposit in the lending institution; securities issued by, or guaranteed by, the U.S. Government or its agencies; and securities issued by, or guaranteed by, U.S. Government-sponsored agencies. The extent to which these securities are recognized as collateral for risk-based capital purposes is determined by their current market value. If a claim is partially collateralized, the portion of the claim that is not collateralized is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor. A claim secured by two types of collateral that the risk-based capital framework recognizes but places in different risk categories should be apportioned to the two risk categories according to the amounts of each type of collateral that secure the claim.

Guarantees of the U.S. Government and its agencies, U.S. Government-sponsored

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[4] Any assets deducted when computing the numerator of the risk-based capital ratio will also be excluded from risk-weighted assets when computing the denominator of the ratio.

[5] In addition to mortgage servicing rights, certain other intangibles may be allowed if explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis.

[6] For risk-based capital purposes, these subsidiaries are generally defined as any banking or finance company in which the reporting banking organization owns more than 50 percent of the outstanding voting stock. In addition to investments in unconsolidated banking and finance subsidiaries, the FDIC may, on a case-by-case basis, deduct investments in associated companies or joint ventures, which are generally defined as any companies in which the reporting banking organization, either directly or indirectly, owns 20 to 50 percent of the outstanding voting stock. Alternatively, the FDIC may, in certain cases, apply an appropriate risk-weighted capital charge against a banking organization's proportionate interest in the assets of associated companies and joint ventures. The definitions for subsidiaries, associated companies and joint ventures are contained in the instructions for the preparation of the Consolidated Reports of Condition and Income.

agencies, domestic state and local governments, and domestic depository institutions are also recognized. *Maturity* is generally not a factor in assigning items to risk categories with the exceptions of securities (direct claims) on the U.S. Government or its agencies, claims on foreign banks, commitments, and interest rate and foreign exchange related contracts. Provided below is a discussion of the risk weights and credit equivalent conversion factors that are used in the risk-based capital framework.

A. Risk Weights for Balance Sheet Assets

The risk-based capital framework sets forth five risk weight categories—0 percent, 10 percent, 20 percent, 50 percent and 100 percent. An explanation of the components of each category and a summary of the types of assets included in each category follows.

Category 1—Zero Percent Risk Weight. This category includes cash (domestic and foreign) owned and held in all offices of a bank or in transit; claims on, and balances due from, Federal Reserve Banks; and, in light of their near-cash characteristics, securities issued by the U.S. Government or its agencies with a *remaining* maturity of 91 days or less.

Category 2—10 Percent Risk Weight. This category includes securities issued by the U.S. Government or its agencies [7] with a remaining maturity of over 91 days; all other claims (including leases) on the U.S. Government or its agencies; all securities and portions of loans guaranteed by the U.S. Government or its agencies; and claims (including repurchase agreements) collateralized by cash on deposit in the lending institution or by securities issued by, or guaranteed by, the U.S. Government or its agencies.

Category 3—20 Percent Risk Weight. This category includes short-term claims (including demand deposits) on domestic depository institutions [8] and short-term claims on all foreign banks [9] (including foreign central banks); cash items in process of collection, both foreign and domestic; local currency claims on foreign central governments to the extent that a bank has local currency liabilities booked in the foreign country; long-term (original maturity of more than one year) claims on domestic depository institutions; [10] and portions of loans or other claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions.[11]

This category also includes claims on, or portions of claims guaranteed by, U.S. Government-*sponsored* agencies, and portions of claims collateralized by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.[12] In addition, this category includes claims on multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by, the full faith and credit of states or political subdivisions of the United States are also assigned to this 20 percent risk category.

Category 4—50 Percent Risk Weight. This category includes *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of state or political subdivisions of the United States, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Category 5—100 Percent Risk Weight. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. Many assets typically found in a banking organization's loan portfolio are assigned to the 100 percent risk category. Such assets include long-term claims (over one year) on foreign banks, and all claims on foreign governments that entail some degree of transfer risk, such as nonlocal currency claims on foreign governments and local currency claims on a foreign central government that exceed local currency liabilities held by the bank in the foreign country.

This category also includes all claims on foreign and domestic private sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[13] investments in fixed assets, premises and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; and commercial and consumer loans, including all residential mortgage loans (except those assigned to lower risk categories due to recognized guarantees or collateral).

Unless already deducted from capital for risk-based capital purposes, the following assets also are included in the 100 percent risk category: investments in unconsolidated companies, joint ventures or associated companies; instruments that qualify as capital issued by other banking organizations; and mortgage servicing rights and other allowed intangibles. Also included in this category are industrial development bonds and similar obligations issued by states and political subdivisions of the United States for the benefit of a private party or enterprise where that party or enterprise, rather than the government, is obligated to pay the principal and interest.

B. Credit Equivalent Conversion Factors for Off-Balance Sheet Items

The face amount of an off-balance sheet item is generally multiplied by a credit conversion factor and the resulting credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.

1. *Items With a 100 Percent Conversion Factor.* A 100 percent conversion factor applies to *direct credit substitutes*, which include *guarantees*, or equivalent instruments, backing *financial* claims, such as outstanding securities, loans or other *financial* obligations, or backing off-balance sheet items that require capital under the risk-based capital framework. These direct credit substitutes include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that effectively guarantee repayment of commercial paper, tax-exempt securities,

[7] For risk-based capital purposes, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government. These agencies include the Government National Mortgage Association (GNMA), the Veterans Administration (VA), the Federal Housing Administration (FHA), the Farmers Home Administration (FmHA), the Export-Import Bank (Exim Bank), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA).

[8] Domestic depository institutions are defined to include branches (foreign and domestic) of federally-insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic banks, and U.S.-chartered depository institutions owned by foreigners. However, this definition excludes branches and agencies of foreign banks located in the U.S. and bank holding companies.

[9] Foreign banks are defined as institutions that are organized under the laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business, and have the power to accept demand deposits. Claims on foreign banks include claims on U.S. branches and agencies of foreign banks.

[10] Claims on foreign banks with an original maturity exceeding one year and claims on bank holding companies are assigned to Category 5, which carries a risk weight of 100 percent.

[11] This includes risk participations in bankers acceptances and in any standby letters of credit and participations in commitments *conveyed* to other domestic depository institutions.

[12] For risk-based capital purposes, U.S. Government-*sponsored* agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA).

[13] Customer liabilities on acceptances outstanding involving non-standard risk claims, such as claims on domestic depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to domestic depository institutions should be assigned to the 20 percent risk category that is appropriate to claims guaranteed by domestic depository institutions.

commercial or individual loans or other debt obligations, or commercial letters of credit. Direct credit substitutes also include the acquisition of *risk participations* in bankers acceptances and standby letters of credit. (Standby letters of credit that are performance-related have a credit conversion factor of 50 percent.)

In the case of direct credit substitutes that are structured in the form of a syndication, that is, where each bank is responsible only for its *pro rata* share of the risk and there is no recourse to the originating bank, the participated portions would be excluded entirely from the originating bank's risk-weighted assets. A banking organization that has conveyed risk participations [14] in a direct credit substitute to a third party should convert the full amount of the direct credit substitute at a 100 percent conversion factor without deducting the risk participations conveyed. However, portions of direct credit substitutes that have been conveyed as risk participations to domestic depository institutions may then be assigned to the 20 percent risk category that is appropriate for claims guaranteed by domestic depository institutions, rather than to the risk category appropriate to the account party obligor. A bank acquiring a risk participation in a direct credit substitute or bankers acceptance should convert the participation at 100 percent and then assign the credit equivalent amount to the risk weight category that is appropriate to the account party obligor.

For risk-based capital purposes, standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute) or *fails to perform* some other contractual obligation (performance bond). A loan commitment, on the other hand, involves an obligation (with or without a material adverse change clause) of the banking organization to provide funds to its customer *in the normal course* of business should the customer seek to draw down the commitment.

Therefore, the distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the notion that funding is triggered by some failure to repay or perform on an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or *fails to perform* on a contractual obligation would be treated, for risk-based capital purposes as, respectively, a financial guarantee-type standby letter of credit (100 percent conversion factor) or a performance standby (50 percent conversion factor).

Sale and repurchase agreements and *asset sales with recourse*, if not already included on the balance sheet, and *forward agreements* are also converted at 100 percent. For risk-based capital purposes, the definition of sales of assets with recourse, including the sales of participations in pools of residential mortgages, is consistent with the definition contained in the instructions for the preparation of the Consolidated Reports of Condition and Income. "Loan strips" and similar arrangements involving short-term loans sold by a bank without direct recourse but subject to long-term loan commitments by the bank are accorded the same treatment as assets sold with recourse. Forward agreements are legally binding agreements (contractual obligations) to purchase assets with *certain* drawdown at a specified future date. These obligations include forward purchases, forward deposits, and partly-paid shares and securities but do not include forward foreign exchange rate contracts.

2. *Items With a 50 Percent Conversion Factor.* Transaction-related contingencies are to be converted at 50 percent. Such contingencies include bid bonds, performance bonds, warranties, and *performance* standby letters of credit related to particular transactions, as well as acquisitions of risk participations in such standby letters of credits. Performance standby letters of credit represent obligations backing the performance of *nonfinancial* or *commercial* contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

The unused portion of *commitments* with an *original* maturity exceeding one year, including underwriting commitments, and commercial and consumer credit commitments, also are to be converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which the following two conditions hold: (1) The bank can, at its option, *unconditionally* (without cause) cancel the commitment, and (2) the bank is scheduled to (and as a normal practice actually does) review the facility to determine whether or not it should be extended. Facilities that are unconditionally cancellable (without cause) at any time by the bank are not deemed to be commitments, provided the bank makes a separate credit decision before each drawing under the facility.

Commitments, for risk-based capital purposes, are defined as any arrangements that obligate a banking organization to extend credit in the form of loans or lease financing receivables; to purchase loans, securities, or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, or similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in risk-weighted assets regardless of whether they contain "material adverse change" clauses or similar provisions that are intended to relieve the issuer of its funding obligation under certain conditions.

In the case of commitments structured as syndications, the risk-based capital framework includes only the banking organization's proportional share of such commitments. After a commitment has been converted at 50 percent, portions of commitments that have been conveyed to other *domestic* depository institutions, but in which the originating banking organization retains the full obligation to the borrower if the participating bank fails to pay when the commitment is drawn upon, will be assigned to the 20 risk category. The acquisition of such a participation would be converted at 50 percent and the credit equivalent amount would be assigned to the risk category that is appropriate for the account party obligor.

Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements also are converted at 50 percent. These are facilities under which a borrower can issue on a revolving basis short-term notes in its own name, but for which the underwriting banking organizations have a legally binding commitment either to purchase any notes the borrower is unable to sell by the rollover date or to advance funds to the borrower.

3. *Items With a 20 Percent Conversion Factor.* Short-term, self-liquidating trade-related contingencies which arise from the movement of goods are converted at 20 percent. Such contingencies include *commercial letters of credit* and other documentary letters of credit collateralized by the underlying shipments.

4. *Items With a Zero Percent Conversion Factor.* These include unused commitments with an original maturity of one year or less. Unused *retail* credit card lines and related plans are deemed to be short-term commitments if the bank has the unconditional option to cancel the credit line at any time.

C. Conversion Factors and Risk Weights for Interest Rate and Foreign Exchange Rate Related Contracts

Credit equivalent amounts are to be computed for each of the following off-balance sheet interest rate and foreign exchange rate related instruments:

Interest Rate Related Contracts:

(1) Single currency interest rate swaps.

(2) Basis swaps.

(3) Forward rate agreements.

(4) Interest rate options purchased (including caps, collars and floors purchased).

(5) Any other instrument that gives rise to similar credit risks (including when-issued securities).

Foreign Exchange Rate Related Contracts:

(1) Cross-currency interest rate swaps.

(2) Forward foreign exchange contracts.

(3) Currency options purchased

(4) Any other instrument that gives rise to similar credit risks.

Over-the-counter options purchased would be treated in the same way as the other interest rate and foreign exchange rate contracts. That is, the credit equivalent amount would be the sum of the marked-to-market replacement cost and the "add-on" amount for the potential future exposure.

[14] That is, participations in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn upon.

For risk-based capital purposes, foreign exchange rate contracts with an original maturity of seven days or less and instruments traded on exchanges that require daily payment of variation margin are excluded.

1. *Credit Equivalent Amounts for Interest Rate and Foreign Exchange Contracts.* Credit equivalent amounts are to be calculated for each individual contract of the types listed above. To calculate the credit equivalent amount of its off-balance sheet interest rate and foreign exchange rate instruments, a banking organization should, for each contract, sum:

(a) The mark-to-market value (positive values only) of the contract (that is, its *current* exposure) [15] and

(b) An estimate of the *potential* future increases in credit exposure over the remaining life of the instrument.

For risk-based capital purposes, potential exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market values, by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
Less than one year	0	1.0
One year and over	0.5	5.0

Because foreign exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

No potential credit exposure should be calculated for single currency floating/floating interest rate swaps; rather, the credit equivalent amount on these contracts should be calculated solely on the basis of their mark-to-market value (positive values only).

2. *Risk Weights for Interest Rate and Foreign Exchange Contracts.* Once the credit equivalent amount for interest rate and foreign exchange rate instruments has been determined, that amount generally should be assigned to a risk weight category according to the identity of the counterparty or, if relevant, the nature of collateral or guarantees. However, the *maximum* risk weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

In certain cases, credit exposures arising from the interest rate and foreign exchange rate instruments may already be reflected, in part, on the balance sheet. To avoid the double counting of such exposures in the assessment of capital adequacy and in the assigning of risk weights, counterparty credit exposures arising from these instruments may need to be excluded from balance sheet assets when calculating a banking organization's total risk-weighted asset figure. However, the *netting* of offsetting positions in swaps and similar contracts will not be recognized for purposes of calculating the risk-based capital ratio.

III. Minimum Target Risk-Based Capital Ratio

A. Minimum Target Risk-Based Capital Ratio After Transition Period

State nonmember banks generally will be expected to meet a minimum target ratio of total capital to risk-weighted assets of 8 percent, of which at least 4 percentage points should be in the form of core capital (Tier 1). Core capital is defined as the sum of common stockholders equity capital (including any minority interests in the common stockholders equity capital accounts of consolidated subsidiaries) minus all intangible assets other than mortgage servicing rights.[16]

The maximum amount of supplementary capital elements that qualify as Tier 2 capital is limited to 100 percent of core capital. Within Tier 2, the maximum amount of the allowance for loan and lease losses that qualifies as supplementary capital is limited to 1.25 percent of risk-weighted assets. In addition, the combined maximum amount of term subordinated debt and intermediate-term preferred stock that qualifies as supplementary capital is limited to 50 percent of core capital.

Total capital is calculated by adding core capital (defined to exclude disallowed intangibles) to supplementary capital (limited to 100 percent of core capital) and then deducting from this sum any capital investments in unconsolidated banking and finance subsidiaries, any intentional, reciprocal cross-holdings of banking organizations' capital securities, and any other items that are deducted at the direction of the FDIC.

B. Transitional Arrangements

The transition period commences with the adoption of this statement of policy and ends on December 31, 1992. The transitional arrangements include an interim minimum target ratio that becomes effective on December 31, 1990. Any state nonmember bank not meeting the interim or final minimum target risk-based capital ratios generally will be expected to develop a capital plan acceptable to the FDIC that sets forth how the organization intends to reach the minimum target ratios.

1. *Transitional arrangements—initial period to year-end 1990.* No formal minimum target ratio for the risk-based capital framework will exist during the initial phase of the transition period. However, any state nonmember bank that has a risk-based capital ratio of less than 8 percent generally will be expected to undertake a sustained effort to move in the direction of meeting that ratio during the transition period. State nonmember banks with ratios of 8 percent or lower generally should not make adjustments to their risk profiles or undertake growth plans that would lower their ratios.

During the initial phase of the transition period, a maximum of 25 percent of core capital (before any deduction of disallowed intangibles) may consist of supplementary capital elements, with the remainder consisting of common stockholders' equity capital. By year-end 1990, however, state nonmember banks will be expected to reduce the amount of supplementary capital elements included in core capital to no more than 10 percent of core capital.

During the initial transition period, the allowance for loan and lease losses may be included in supplementary capital without limit. However, by the end of 1990, the amount of the allowance for loan and lease losses that is eligible for inclusion in supplementary capital may not exceed 1.5 percent of risk-weighted assets.

2. *Transitional arrangements—year-end 1990 through year-end 1992.* Beginning with the second and final phase of the transition period, state nonmember banks generally will be expected to meet a minimum total capital to risk-weighted asset ratio of 7.25 percent, at least one-half of which should be in the form of core capital. In addition, during this period, up to 10 percent of an organization's core capital (before any deduction for disallowed intangibles) may consist of supplementary capital elements. Thus, the 7.25 percent interim target ratio implies a minimum ratio of core capital to risk-weighted assets of 3.6 percent (or one-half of 7.25) and a minimum common stockholders' equity capital to risk-weighted assets ratio of 3.25 percent (or nine-tenths of the core capital ratio). By the end of 1992, a state nonmember bank's core capital should consist *solely* of common stockholders' equity capital.

During this final phase of the transition period, the maximum amount of the allowance for loan and lease losses that may qualify as supplementary capital will be limited to 1.5 percent of risk-weighted assets (that is, 1.5 percentage points of the 7.25 percent interim target risk-based capital ratio) and this percentage limitation will decline to 1.25 percent when the transitional arrangements end on December 31, 1992. For risk-based capital purposes, allowances for loan and lease losses in excess of these limits will not be included in a state nonmember bank's total capital base, even though state nonmember banks shall continue to maintain loan loss reserves at levels sufficient to cover the losses inherent in their loan portfolios.

This Statement of Policy on Risk-Based Capital does not replace or eliminate the existing Part 325 capital-to-total assets ratios, although the FDIC may subsequently consider whether these Part 325 leverage ratios should continue to be employed once the risk-based capital framework is fully implemented. If the leverage requirements are to be permanently maintained in tandem with the risk-based capital framework, the FDIC may also consider whether the Part 325 definitions of capital for leverage purposes should be revised to more closely conform

[15] Mark-to-market values should be measured in dollars, regardless of the currency or currencies specified in the contract.

[16] In addition to mortgage servicing rights, certain other intangibles may be allowed in core capital if explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis.

with the definitions of capital that are used for risk-based capital purposes.

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1)	Must equal or exceed 4% of risk-weighted assets.
Common stockholders' equity capital.	No limit.
Minority interests in common equity capital accounts of consolidated subsidiaries.	No limit.
Less: All intangible assets other than mortgage servicing rights [1].	
Supplementary Capital (Tier 2).	Total of Tier 2 is limited to 100% of Tier 1.[2]
Allowance for loan and lease losses.	Limited to 1.25% of risk-weighted assets.[2]
Perpetual and long-term preferred stock (original maturity of 20 years or more).	No limit within Tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
Hybrid capital instruments (including mandatory convertible securities).	No limit within Tier 2.
Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of 7 years or more).	Term subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1 [2] and amortized for capital purposes as they approach maturity.
Deductions (from the sum of Tier 1 plus Tier 2).	
Investments in unconsolidated banking and finance subsidiaries.	
Intentional, reciprocal cross-holdings of capital securities issued by banking organizations.	
Other deductions (such as investments in other subsidiaries or in joint ventures) as determined by supervisory authority.	On case-by-case basis or as matter of policy after formal consideration of relevant issues.
Total Capital (Tier 1 + Tier 2 − Deductions).	Must equal or exceed 8% of risk-weighted assets.

[1] In addition to mortgage servicing rights, certain other intangibles may be allowed in core capital if explicitly approved by the FDIC on a specific case basis. All deductions are for capital adequacy purposes only; deductions would not affect accounting treatment.

[2] Amounts in excess of limitations are permitted but do not qualify as capital.

When calculating the risk-based capital ratio under the framework set forth in this statement of policy, qualifying capital (the numerator) is divided by risk-weighted assets (the denominator). The process of determining the numerator for the ratio is summarized in Table I. The calculation of the denominator is based on the risk weights and conversion factors that are summarized in Tables II and III.

When determining the amount of risk-weighted assets, balance sheet assets are assigned an appropriate risk weight (see Table II) and off-balance sheet items are first converted to a credit equivalent amount (see Table III) and then assigned to one of the risk weight categories set forth in Table II.

The balance sheet assets and the credit equivalent amount of off-balance sheet items are then multiplied by the appropriate risk weight percentages and the sum of these risk-weighted amounts is the gross risk-weighted asset figure used in determining the denominator of the risk-based capital ratio. Any items deducted from capital when determining the amount of qualifying capital may also be deducted from the gross risk-weighted asset figure when determining the denominator for the risk-based capital ratio.

TABLE II.—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

Category 1—Zero Percent Risk Weight

(1) Cash (domestic and foreign)

(2) Balances due from, and claims on, Federal Reserve Banks

(3) Securities issued by the U.S. Government or its agencies [1] with a remaining maturity of 91 days or less

Category 2—10 Percent Risk Weight

(1) Securities issued by the U.S. Government or its agencies [1] with remaining maturities of over 91 days and all other claims (loans and leases) on the U.S. Government or its agencies [1]

(2) Securities and other claims guaranteed by the U.S. Government or its agencies (including portions of claims guaranteed)

(3) Portions of loans and other assets collateralized [2] by securities issued by, or guaranteed by, the U.S. Government or its agencies, or by cash on deposit in the lending institution

(4) Federal Reserve Bank stock

Category 3—20 Percent Risk Weight

(1) All claims (long- and short-term) on domestic depository institutions

(2) Claims on foreign banks with an original maturity of one year or less

(3) Claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions

(4) Local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country

(5) Cash items in the process of collection

(6) Securities and other claims on, or guaranteed by, U.S. Government-*sponsored* agencies (including portions of claims guaranteed) [3]

(7) Portions of loans and other assets collateralized [4] by securities issued by, or guaranteed by, U.S. Government-sponsored agencies

(8) General obligation claims on, and claims guaranteed by, U.S. State and local governments that are secured by the full faith and credit of the State or local taxing authority (including portions of claims guaranteed)

(9) Claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member

Category 4—50 Percent Risk Weight

(1) Revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. State or local governments, but for which the government entity is committed to repay the debt only out of revenues from the specific projects financed

(2) Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category

Category 5—100 Percent Risk Weight

(1) All other claims on private obligors

(2) Claims on foreign banks with an original maturity exceeding one year

(3) Claims on foreign central governments that are not included in item 4 of Category 3

(4) Obligations issued by State or local governments (including industrial development authorities and similar entities) repayable solely by a private party or enterprise

(5) Premises, plant, and equipment; other fixed assets; and other real estate owned

(6) Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital

(7) Instruments issued by other banking organizations that qualify as capital

(8) All other assets (including claims on commercial firms owned by the public sector)

TABLE III.—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

100 Percent Conversion Factor

(1) Direct credit substitutes (general guarantees of indebtedness and guarantee-type instruments, including standby letters of credit that effectively guarantee the repayment of loans, securities and commercial letters of credit)

(2) Acquisitions of risk participations in bankers acceptances and standby letters of credit

(3) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet

[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[2] Degree of collateralization is determined by current market value.

[3] For the purpose of calculating the risk-based capital ratio, a U.S. Government-*sponsored* agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

[4] Degree of collateralization is determined by current market value.

(4) Forward agreements (that is, contractual obligations) to purchase assets with *certain* drawdown at a specified future date

50 Percent Conversion Factor

(1) Transaction-related contingencies (e.g., bid bonds, performance bonds, warranties, and performance standby letters of credit related to particular transactions)

(2) Unused commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines

(3) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements

20 Percent Conversion Factor

(1) Short-term, self-liquidating trade-related contingencies, including commercial letters of credit

Zero Percent Conversion Factor

(1) Unused commitments with an original maturity of one year or less or which are unconditionally cancellable at any time

Credit Conversion for Interest Rate and Foreign Exchange Rate Related Contracts

The total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) would be added to a measure of future potential increases in credit exposure. This future potential measure would be calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
Less than one year	0	1.0
One year and over	0.5	5.0

No potential exposure would be calculated for single currency floating/floating interest rate contracts; the credit exposure on these contracts would be evaluated solely on the basis of their market-to-market value. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

By order of the Board of Directors, this first day of March 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

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federal register

Tuesday
March 15, 1988

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Final Annual Funding Priorities for Certain New Direct Grant Awards; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Final Annual Funding Priorities for Certain New Direct Grant Awards

AGENCY: Department of Education.

ACTION: Notice of Final Annual Funding Priorities for Certain New Direct Grant Awards.

SUMMARY: The Secretary announces final annual funding priorities for grants under the Handicapped Children's Early Education Program, Services for Deaf-Blind Children and Youth Program for Severely Handicapped Children and Educational Media Research, Production, Distribution, and Training.

EFFECTIVE DATE: These annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these annual funding priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4092–MS 2313), Washington, DC 20202. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: On November 18, 1987 at 52 FR 44324, the Secretary published in the **Federal Register** a Consolidated Application Package (CAP) which contained four programs consisting of 18 program competitions under the Office of Special Education and Rehabilitative Services (OSERS). The notice invited applications for fiscal year 1988 grants.

This notice announces final annual funding priorities for fiscal year 1988.

Analysis of Comments and Changes

OSERS received three letters of comments from the public. Some additional clarifying changes have been made where necessary in the priorities for all programs. A discussion of the requests for clarification and changes on each individual priority follows:

Handicapped Children Early Education Program Clarification of ages to be served (Priorities 3 and 4)

Comments: Two commenters requested clarification of ages of handicapped children addressed by priorities 3 and 4 of the Handicapped Children's Early Education Program, National Outreach Projects, and Statewide Outreach Projects.

Discussion: The intention of these priorities was that needs of children with handicaps ages eight and below be addressed. The Secretary recognizes the importance of facilitating the transition of children with handicaps from preschool age programs to primary grade programs.

Changes: The Secretary has clarified priorities 3 and 4 to assure that the needs of children with handicaps, ages eight and below will be addressed.

Educational Media Research, Production, Distribution and Training Program Expansion of Priorities (Priorities 1 and 2)

Comments: One commenter suggested expanding the priorities to include production of video tapes and media materials.

Discussion: These are permissible activities that the Secretary decided not to support this year.

Changes: None.

Services for Deaf-Blind Children and Youth

Under Services for Deaf-Blind Children and Youth, priority 1 was announced as an absolute priority as authorized under 34 CFR 307.11 and there is no reason to republish in this document.

Title of Program: Handicapped Children's Early Education Program.

CFDA No.: 84.024.

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants and children with handicaps, from birth through eight years of age, including demonstration, outreach, and experimental projects, research and training activities, and two early childhood research institutes.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Handicapped Children's Early Education Program, CFDA 84.024, for fiscal year 1988 to applications that respond to the following priorities: that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Demonstration Projects for Integrated Preschool Services (CFDA No. 84.024A)

This priority supports projects that provide models for integrated preschool services in which children with handicaps receive education and related services alongside nonhandicapped children of the same or similar ages. Projects under this priority must design models to enable preschool-aged children with handicaps to achieve their optimal functioning level within nomalized, nonsegregated, least restrictive environments. These models should implement policies of State and local agencies that can be transferred to and used by a State educational agency to develop or improve local services under the State's administation of the Preschool Grant Program (section 619 of the Education of the Handicapped Act, as amended).

Priority 2: Demonstration Projects for Methodology for Serving Infants and Toddlers with Specific Disabilities (CFDA No. 84.024F)

This priority supports demonstration projects that develop and implement new and improved procedures for serving infants and toddlers with specific disability conditions for which current practices may not be appropriate or adequately developed. Projects may focus on any defined group of infants for whom applicants demonstrate existing procedures to be inadequate, including those with Down's syndrome, cerebral palsy, extremely low birth weight of less than 750 grams, extremely low birth weight in combination with other medical conditions such as bronchialpulmonary dysplasia (BPD), or myleomeningecele. Projects supported under this priority must develop a service model that demonstrates and evaluates the effectiveness of the new and improved procedures.

Priority 3: National Outreach Projects (CFDA No. 84.024C)

This priority supports projects that implement in multiple States proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Coordinate through the State education agency (for preschool projects or for projects serving children three through eight years of age) or through the lead agency for the Early Intervention Program for Infants and Toddlers with Handicaps under Part H of the Act in each State in which outreach activities will be implemented; and

(2) Disseminate are replicate those proven models, or components of models, that establish services needed to assist children with handicaps, ages eight and below, to achieve their optimal functioning level within normalized, nonsegregated, least restrictive environments. These services

must, at a minimum, contain the following components:

(i) Curricula relevant to programming in normalized settings including provision for skills necessary to function in current and future educational and community environments;

(ii) Team-based programming that integrates the input of parents, teachers, and various therapeutic and other professional disciplines; and

(iii) Effective involvement of families in the planning and delivery of services for children with handicaps.

Priority 4: State-wide Outreach Projects (CFDA No. 84.024E)

This priority supports projects that implement throughout a specific State proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Disseminate and replicate, in conjunction with the appropriate State agency, activities to improve the quality of early intervention or special education and related services provided throughout the State for children with handicaps, ages eight and below;

(2) Disseminate and replicate those proven models, or components of models, that establish services needed to assist children with handicaps, ages eight and below, to achieve their optimal functioning. Services must at a minimum contain the following components:

(i) Curricula relevant to programming in normalized settings including the provision for skills necessary to function in current and future educational and community environments;

(ii) Team-based programming that integrates the input of parents, teachers, and therapists and other professional disciplines; and

(iii) Effective involvement of families in the planning and delivery of services for children with handicaps.

Priority 5: Nondirected Experimental Projects (CFDA No. 84.024G)

This priority supports investigations of alternate strategies to reach intervention and educational objectives for children with handicaps within the ages birth through eight years. Strategies selected for comparison should include those for which information regarding their relative effectiveness is not available. Projects supported under this priority must:

(1) Compare the alternate strategies in typical service settings:

(2) Conduct the investigations using methodological procedures that will produce unambiguous findings regarding the relative effectiveness of the alternate strategies; and

(3) Design the research in a manner that will lead to improved services for children with handicaps ages eight and below.

Priority 6: Experimental Projects on Compensatory Strategies (CFDA No. 84.024H)

This priority supports experimental projects that compare compensatory strategies with infants, toddlers, and children with handicaps, aged birth through eight years, for whom developmentally normative responses required in functional tasks are precluded or hindered. Projects supported under this priority must:

(1) Compare compensatory strategies that result in functional skills, such as use of motorized mobility devices, augmentative communication systems, environmental control systems, or other types of adaptations or technological applications that enable functional responding;

(2) Compare the alternate compensatory strategies in typical service settings;

(3) Conduct the investigations using methodological procedures that will produce unambiguous findings regarding the relative effectiveness of the alternate compensatory strategies; and

(4) Design the research in a manner that will lead to improved services for children with handicaps within the ages of birth through eight years.

Priority 7: Approaches for Instructing and Maintaining Students with Handicaps in General Education Classrooms (CFDA No. 84.024J)

This priority supports research projects to develop and test instructional approaches to be used with young students with handicaps, aged eight and below, in general education classrooms. The objective of these approaches will be to enable young students with handicaps to receive appropriate instruction within regular education settings. Specifically, projects must develop and test approaches in one of two areas:

(1) Classroom, grade or building level strategies that result in appropriate instruction within the regular classroom for all students ages eight and below including those with handicaps and other students with diverse educational needs. Strategies could include classroom, grade, or building level organizational structures, instructional strategies, management strategies, curricula, materials and equipment, teacher support strategies, and strategies for coordinating primary level instruction with any services provided at the preschool level.

(2) Strategies that ensure primary level (K–3) students with handicaps will function successfully in the upper elementary grades (4–6). Projects must focus on strategies that allow young children with handicaps who have been educated in regular education classrooms to continue in regular education through upper elementary school. Furthermore, the projects must ensure that successful strategies used with these handicapped students in primary grades are communicated and transported to the upper elementary grades in order to bring about the smooth transition across grades and the maintenance of students with handicaps in regular education.

The research design must include measures of implementation and outcome, and employ comparison buildings or classrooms where the strategy is not implemented. The research must be conducted using an overall conceptual framework and must examine the positive and negative impacts of the strategies on students with handicaps as well as their nonhandicapped peers. Multiple outcome measures including, but not limited to, academic achievement, social development, and social integration must be used. One indication of the effectiveness of the strategy would be the successful maintenance in regular education of children with handicaps.

Priority 8: Early Childhood Research Institute—Transitions (CFDA No. 84.024W)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies to improve the transitions that children with handicaps and their families experience during the early childhood period. The goal of the institute is to produce validated intervention procedures that service providers can use to assist children with handicaps and their families as they confront changes in services and changes in personnel who coordinate or provide services during this period. The program of research and development must address, but need not be limited to, the transitions from hospital to home, from infant services to preschool services, from preschool services to primary grades, and from nonintegrated to integrated programs. For each of these major transitions, the research and development program must address the transitional needs of both children and families.

The institute must conduct a program of research and development to produce intervention strategies that will prevent or reduce the problems that children and families commonly experience when making the transition from hospital to home. The major problems during this period relate to continued psychological and emotional adjustments of parents and other family members, the change in emphasis from receiving medical care to locating other kinds of services, arranging for the transfer of medical information and records from the hospital to other service agencies, and the need for continuity of certain kinds of services. Although many of the transitional interventions at this stage will be directed to parents and families (rather than the child), the institute must also develop interventions that will assist the child to adjust to a different environment, through, for example, provision of some sameness in areas such as handling, interaction patterns, stimulation regimens, and physical environment as well as in other phasing-out and phasing-in procedures across settings.

The institute must also conduct a program of research and development to produce interventions that will prevent or reduce the problems that children and families experience when making the transition from infant services to preschool services, from preschool services to primary grades, and from nonintegrated to integrated programs. Intervention strategies for these transitions, while encompassing many of the transitional needs of children and families described above, must also address the stresses related to arranging for services that will be provided by different personnel and agencies, adjustments to receiving different services than were provided earlier, problems associated with working with new teams of service providers, and issues related to arranging for the receipt of services in the home, at a center, in a local school, or some combination of these during different transition periods. For the child, these transitional periods often signal a major adjustment in daily activities, from being transported to a center or school, to separation from parents for long periods, to entering an environment with other children, to adjusting to new adults, new expectations, and new rules of behavior.

In conducting the research and development activities, the institute's intervention strategies must address the kinds of stresses and demands that are commonly experienced by children and families during each transitional period, but must also be sufficiently flexible to address the unique characteristics and circumstances of particular children and families. The research and development process must produce techniques that will enable service providers to identify specific child and family problems related to each transitional period and to individualize intervention procedures that are needed. Further, the intervention strategies for children must include procedures that will develop the knowledge, skills and competencies needed by the child in new settings as well as accommodations in both current and future environments that will promote successful transitions.

As a part of its program of research and development, the institute must include studies that will (1) determine when the transitional interventions should be implemented to be most effective, (2) ascertain the effectiveness of the intervention across a variety of clients (children and families) and programs, (3) lead to models and strategies for including transitional intervention objectives in individualized family service plans and individualized education programs, and (4) identify effective methods and materials that service providers can use to monitor the outcomes associated with the interventions.

The institute must conduct the program of research and development within a conceptual framework that identifies the transitional periods to be studied; the known and hypothesized problems associated with each transitional period; initial intervention strategies that will be studied; the measurement instruments and procedures that will be used in the investigations; the relationship between planned investigations and already available knowledge, products and practices; methods of packaging and disseminating the validated intervention strategies to service delivery providers; and the relationship of each study to the objectives of this priority.

In carrying out its research and development activities, the institute must provide research training and experience for at least 10 graduate students annually.

Period of Award

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timelines and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Priority 9: Early Childhood Research Institute—Intervention (CFDA No. 84.024S)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies for infants and toddlers with handicaps who, because of the nature of their handicapping conditions, require extended medical care and management and who may require sustained use of life-supporting technologies. The goal of the institute is to produce findings that can be used to optimize the developmental well-being of these infants and toddlers in concert with the provision of intensive health care in Neonatal Intensive Care Units (NICUs), in extended care facilities for infants and toddlers, or in repeated hospitalizations during their first three years of life. The institute must conduct a comprehensive program of research to: (1) Design and validate strategies that can be used with these infants and toddlers to promote development during extended or repeated hospitalizations; (2) improve procedures related to the identification and referral process; and (3) investigate and improve organizational structures to ensure support of comprehensive services for infants and toddlers.

Procedures to optimize the development of infants and toddlers with handicaps that include extensive special health care needs must be carefully designed and implemented. The institute's research must include, but need not be limited to, studies to: (1) Develop exemplary decision-making models to determine the points in an infant's or toddler's life when nonmedical interventions can be appropriately and safely administered; (2) identify a variety of effective nonmedical interventions that are keyed to family and child needs; (3) investigate the use of methods and identify criteria to enlist and involve the services of different State and local agencies, including the State protection and advocacy agency, the State department of health, the State welfare or protective services department and the State lead agency for the Early Intervention Program for Infants and Toddlers with Handicaps under Part H of the Act, in programming for families and their infants and toddlers with handicaps; and (4) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services.

Procedures related to the identification and referral of these infants and toddlers and their families are an essential component of a coordinated system of comprehensive care. Numerous professionals and agencies may need to be involved to support and enable families to meet the extensive health and developmental needs of their children. In addressing these issues, the institute's program of research must include, but need not be limited to, studies to: (1) Establish criteria to identify and define the population of infants and toddlers with developmental and special health care needs; (2) develop exemplary practices for referral to other services and agencies and for tracking services provided for the infant or toddler and the family; and (3) identify effective strategies for involving a team of various disciplines in planning and implementing the individualized family service plan.

Organizational structures that relate to the identification, referral, and intervention process for these infants and toddlers and their families can facilitate or hinder the delivery of comprehensive services. The structures used in NICUs, in-patient acute care facilities, or extended care facilities for infants and toddlers may be quite different from those used by community-based health, education, or service agencies. Organizational structures used in hospital programs must interface with those used in community-based programs to provide quality comprehensive care for families and their children. In investigating this area, the institute's research must include, but need not be limited to, studies to: (1) Identify the full range of medical and developmental services and personnel needed for infants with handicaps and special health care needs while hospitalized in an NICU; (2) develop and validate model organziational structures for NICUs and follow-up clinics and programs that strengthen the role of families and facilitate coordination among medical and developmental services and between inpatient and outpatient care, including descriptions of types of personnel, their roles and responsibilities, and lines of communication; and (3) investigate options for home care of infants and toddlers with developmental and special health care needs that are outside a hospital or inpatient extended care facility and that include appropriate levels of financial and other supports necessary to meet the extensive medical, health, and developmental needs of the infant or toddler.

In addition to conducting the research described above, the institute must commit approximately 20% of its annual budget to conducting inservice training activities. These activities must be designed to assist hospital NICUs and regular staff to learn about new or improved procedures and organizational structures to serve families and their infants and toddlers with handicaps that include special health care needs. The training activities must be based on the results of the institute's research program, already published information, and existing exemplary practices.

In conducting the research program and in order to field test the procedures and organizational structures, the institute supported under this priority must work with a consortium of NICUs and their follow-up clinics and programs as well as participating hospitals that specialize in acute care for children. The consortium must vary on dimensions of quality and comprehensiveness of services, client characteristics, geographic location, intake and referral procedures, and regional coordination. Further, the institute's research program must be conducted within a conceptual framework that identifies the specific issues to be studied; the known and hypothesized problems associated with each issue; the initial intervention strategies and organizational structures that will be studied; measurement instruments and procedures that will be used in the investigations; the relationship between planned investigations and already existing knowledge, products and practices; methods of disseminating the validated intervention strategies and organizational structures to service delivery providers; and the relationship of each study to the objectives of this priority.

In carrying out its research and developmental activities, the institute must provide research training and experience for at least 10 graduate students annually. Given the nature of this institute, some of the students selected for training may be graduate students in health or health-related fields who desire to gain expertise in conducting interdisciplinary research and development in hospital settings.

Period of Award

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirement of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timelines and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Program Authority: 20 U.S.C. 1423.

Title of Program: Program for Severely Handicapped Children

CFDA No.: 84.086

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

Priorities: In accordance with the Education Department General

Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Program for Severely Handicapped Children, CFDA 84.086, in fiscal year 1988, to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Nondirected Demonstration and Research Projects for Severely Handicapped (Other than Deaf-Blind) Children and Youth (CFDA 84.086C)

This priority supports projects: (1) That develop or demonstrate new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of severely handicapped (other than deaf-blind) children and youth; and (2) that conduct research to identify and meet specific educational or related needs selected from the full range of special needs of severely handicapped (other than deaf-blind) children and youth. Applicants must indicate whether applications are to be considered demonstration or research projects.

The Secretary particularly invites applications that: (a) improve the education and related services available to individuals with the most severe impairments; (b) improve and expand social interaction skills for people with severe handicaps through training in social interaction and related skills and expansion of social contacts in regular classrooms, workplaces, or recreational activities; or (c) improve curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities. However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application submitted under this notice that meets these invitational priorities will not be given a competitive or absolute preference over other applications.

Priority 2: Nondirected Demonstration and Research Projects for Deaf-Blind Children and Youth (CFDA 84.086H)

This priority supports projects (1) that develop or demonstrate new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of deaf-blind children and youth; and (2) that conduct research to identify and meet specific educational or related needs selected from the full range of special needs of deaf-blind children and youth. Applicants must indicate whether applications are to be considered demonstration or research projects.

The Secretary particularly invites applications that: (a) Improve the expressive and receptive communication of children who are deaf and blind; (b) improve the preparation for and transition to supported employment; (c) improve the abilities and opportunities for living in regular community environments; or (d) improve the social network of children with deaf-blindness through related skill training and expansion of social contacts in regular classrooms, workplaces, or recreational settings. However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application submitted under this notice that meets this invitational priority will not be given a competitive or absolute preference over other applications.

Priority 3: State-wide Systems Change (CFDA No. 84.086J)

This priority supports projects that: (a) Develop, in conjunction with the Part B State plan, activities to improve the quality of special education and related services in the State for severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments; (b) significantly increase the number of severely handicapped children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers; (c) evaluate the effectiveness of these activities, including collecting and reporting each year on the number of children with severe handicaps in the State in each type of educational setting and showing changes from previous years; and (d) disseminate information about the project's outcomes.

Applicants under this priority must describe in detail how they will accomplish the following tasks:

(1) Identify resources available in the State to provide the needed services to children and youth who are severely handicapped;

(2) Improve the State's Part B and Part H child-fund activities pertaining to all children and youth with severe handicaps within the State;

(3) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, non-segregated least restrictive environments. These services must at a minimum:

(i) Develop new approaches for delivery of integrated educational services that include providing severely handicapped children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(ii) Demonstrate through the provision of project service the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(iii) Demonstrate the delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community reference skills, and employment skills;

(iv) Promote acceptance of severely handicapped children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(v) Describe how the unique needs of deaf-blind children and youth will be addressed by project activities;

(vi) Demonstrate the effectiveness of extended school year activities in promoting the development and maintenance of skills for severely handicapped children and youth; and

(vii) Demonstrate effective involvement of families in the planning and delivery of services to their severely handicapped children and youth;

(4) Establish a project advisory board having representation of parents of project children and youth, providers of services to this population, and State and professional organizations, that is responsible for providing significant input on project management procedures; and

(5) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, including the elimination of overlapping and redundant services.

Priority 4: Inservice Training—Services for Severely Handicapped Children and Youth (CFDA No. 84.086R)

This priority supports projects that utilize effective inservice training activities that meet the needs of qualified personnel to provide educational and related services to severely handicapped, including deaf-blind, children and youth. Personnel receiving inservice training under this priority must be either:

(1) Currently providing educational services to these severely handicapped, including deaf-blind, children and youth; or

(2) Committed by signed contract or other agreement to provide educational services to these severely handicapped, including deaf-blind, children and youth for at least a one-year period following the completion of the inservice training provided under this priority.

The inservice training provided must be based on innovative practices for the education of these children and youth in least restrictive environments. These practices could include, for example, training sequences for development of job-related skills determined to be critical for retention of students in supported work placements; use of augmentative communication devices for deaf-blind children placed in least restrictive environments; parental involvement in monitoring the progress of their severely handicapped children; and application of research project findings with severely handicapped children in normalized least restrictive environments.

Applicants under this priority must have an on-going model of innovative, effective educational approaches for severely handicapped (including deaf-blind) children or youth through which persons receiving inservice training under this priority will be provided practicum training experiences.

Training may be made available for professionals and paraprofessionals in educational, vocational, health, social services, and other related service fields. All inservice training projects must be planned in consideration of the comprehensive system of personnel development required under Part B and Part H of the EHA (See 34 CFR 300.139) and demonstrate ongoing coordination and cooperation between universities and State agencies. Projects could provide for release time of participants, options for academic credit, salary step credit, certification renewal, or updating professional skills.

The Secretary may authorize the payment of stipends, on a case-by-case basis, for inservice training in an amount the Secretary determines appropriate for a particular training activity.

Priority 5: Extended School Year Program for Severely Handicapped Children (CFDA 84.086S)

This priority supports demonstration projects that design, implement, and disseminate information about innovative practices that provide extended school year activities for severely handicapped children who may also have visual and hearing handicaps. The extended school-year programs are those that provide services during the interim between two regular school years, if the interim period is at least four weeks in length. Activities provided by these projects may include any of the services under 34 CFR 307.11(a)(1).

These projects must focus on maintaining and enhancing skill development and training of these children in integrated, least restrictive environments that promote social and communicative interaction.

Program authority: 20 U.S.C. 1424.

Title of Program: Services For Deaf-Blind Children and Youth

CFDA No.: 84.025

Purpose: To provide Federal financial assistance for State and Multi-State projects to make available services to deaf-blind children and youth and to provide technical assistance for this population.

Priority 1: State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025A)—See statement under Analysis of Comments and Responses.

Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Services for Deaf-Blind Children and Youth Program in fiscal year 1988 to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority 2: Technical Assistance to State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA 84.025C)

This priority supports one project that on a national basis provides technical assistance to grantees under 34 CFR 307.11 (State and Multi-State Projects for Deaf-Blind Children and Youth) in the provision of services to deaf-blind children and youth ages birth through 21 years. Applicants must describe how they will meet the requirements specified in 34 CFR 307.12 of the program regulations and demonstrate the capability to serve the heterogenous population of deaf-blind children and youth, including those children who have high as well as low functional levels.

Technical assistance services are to be focused on the improvement of services to children and youth with deaf-blindness in their current placement but promote the movement of those children in restrictive settings to an integrated, less restrictive environment.

The applicant must describe how the project will develop, implement, and evaluate a technical assistance plan with each 34 CFR 307.11 grantee and the State educational agency of the State in which the technical assistance is provided. In addition, the applicant must describe how the project will provide technical assistance to the 34 CFR 307.11 grantees in their preparation and submission of data required under 34 307.40, including a reconciliation of that data with the child count provided by the State under Part B of the Education of the Handicapped Act and Chapter 1 of the Education Consolidation and Improvement Act.

Program Authority: 20 U.S.C. 1422.

Title of Program: Educational Media Research, Production, Distribution, and Training.

CFDA No.: 84.026

Purpose: To provide Federal financial assistance for: (a) Conducting research in the use of educational media and technology for persons with handicaps; (b) producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and (c) training persons in the use of educational media for the instruction of persons with handicaps. Awards under this program are authorized under Part F of the Education of the Handicapped Act, as amended.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Educational Media Research, Production, Distribution, and Training program, CFDA No. 84.026, for fiscal year 1988 to applications that respond to the following priorities: that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Closed-Captioned Sports Program (CFDA No. 84.026A)

This priority supports one cooperative agreement for the closed-captioning of sports programs to permit full access to remarks made by sports commentators. Currently, access to the commentary and other pertinent information is not available. This project will offer persons with hearing impairments enriched educational and cultural experiences in which sports play a large part.

Priority 2: Closed-Captioned Local and Regional News (CFDA No. 84.026L)

This priority supports new projects for the closed-captioning of local television news programs. Projects would be incrementally funded to encourage closed-captioning of local news. At the end of the third year applicants are expected to continue the project without additional Federal support.

Program Authority: 20 U.S.C. 1451, 1452.

Intergovernmental Review

These programs (except the Program for Severely Handicapped Children) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

(Catalog of Federal Domestic Assistance Numbers: 84.024 Handicapped Children's Early Education Program; 84.025 Services For Deaf-Blind Children and Youth; 84.026 Educational Media Research, Production, Distribution, and Training Program; 84.086 Program for Severely (Including Deaf-Blind) Children and Youth.)

Dated: March 2, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-5591 Filed 3-14-88; 8:45 am]

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Tuesday
March 15, 1988

Part IV

Department of the Treasury

Office of the Assistant Secretary

17 CFR Parts 400, 402, 403, 404 and 450

Implementation of Regulations for the Government Securities Act of 1986; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary

17 CFR Parts 400, 402, 403, 404, and 450

Implementation of Regulations for the Government Securities Act of 1986

AGENCY: Office of the Assistant Secretary (Domestic Finance), Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Department") is issuing for comment several proposed clarifying amendments to the regulations issued on July 24, 1987 (52 FR 27910) under the Government Securities Act of 1986 (the "Government Securities Act" or "GSA"). The amendments are being proposed to resolve some technical problems and omissions in the rule, to make conforming changes, and to clarify the Department's intent with respect to certain provisions that have raised questions.

DATES: Comments must be submitted on or before April 14, 1988.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, Room 209, 999 E Street, Washington, DC 20239-0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Anne Meister (Government Securities Specialist), Don Hammond (Government Securities Specialist) or Clifford Rones (Attorney-Advisor) at 202-376-4632.

SUPPLEMENTARY INFORMATION:

I. Background

The GSA established, 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 non-security financial instruments, exempted securities, and/or futures and other commodity interests regulated by the Commodity Futures Trading Commission ("CFTC"). Previously unregulated government securities brokers and dealers were required to register with the Securities and Exchange Commission ("Commission" or "SEC") and join a self-regulatory organization by July 25, 1987.

The GSA also provided for the regulation of all other brokers and dealers in government securities. Those entities were required to notify their principal regulatory agency of their status as government securities brokers or dealers by July 25, 1987.

The Secretary of the Treasury ("Secretary") is required by Section 15C(b) of the Securities Exchange Act of 1934, as amended by the GSA (15 U.S.C. 78o-5(b)), 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. The rules are designed to enhance the protection of investors in government securities while maintaining a fair, honest, and liquid market in such securities. Title II of the GSA (31 U.S.C. 3121(h)) also requires the Secretary to adopt regulations relating to the custody of government securities held by depository institutions. Final regulations in response to this mandate were issued by the Department on July 24, 1987 (52 FR 27910).

Since publication of the final regulations, the Department has received numerous informal comments and inquiries concerning the regulations from government securities brokers and dealers, depository institutions, investors, and their representatives. The Department also has continued to consult on a frequent basis with the agencies responsible for enforcement of the regulations, the SEC, the several financial institution federal regulatory agencies, and the National Association of Securities Dealers ("NASD"), among others.

As a result of the above process, it has become apparent that certain portions of the regulations should be revised to correct omissions or inconsistencies in certain areas or to achieve more accurately the Department's original intent. Thus, the Department proposes to amend the regulations as more fully described below.

II. Section-by-Section Analysis of Proposed Changes

A. Part 400—Rules of General Application

In Part 400, changes are being proposed to § 400.2, which deals with the filing and handling of requests for exemption, for interpretation and of other materials.

Expediting Release of Non-Confidential Material; Treatment of Confidential Material

The Department is proposing to amend portions of § 400.2 that relate to the submission of requests for interpretation, exemption, and classification and the confidential treatment of such requests. The proposed rule would: (1) Provide for expedited publication of written requests for interpretation, exemption, and classification together with the Department's response, unless temporary confidential treatment is granted, and (2) clarify the procedure for requesting confidential treatment of sensitive commercial and business information submitted to the Department in connection with a request for interpretation, exemption, or classification.

Under the current provision, written requests for interpretation, classification, and exemption and the Department's responses are made available to the public 30 days after the response is provided to the requesting party. A requesting party may ask the Department to treat the response and incoming request as confidential for an additional 90 days. This provision, § 400.2(c)(7) of the regulations, was originally modeled after 17 CFR 200.81, which is the Commission's rule addressing release of its no-action, interpretive and exemption letters. The Department notes that the Commission recently published proposed modifications to its rule (52 FR 35115, September 17, 1987) which are similar to those proposed here. The Commission's proposed changes include expedited release of no-action and other letters.

In the SEC's proposal, the Commission indicated that there has been substantial public interest in its staff's interpretive and no-action letters, and that earlier public availability would serve to reduce duplicative requests, simplify administrative procedures, and reduce potential confusion by having these letters made available as soon as possible. The Department believes that the same advantages would accrue to its responses to requests for interpretation, exemption, and classification and proposes to amend its regulations accordingly. Therefore, under the proposed rule, the Department would make requests and responses available to the public for inspection and copying as soon as practicable after the response is provided to the requesting party.

A party making a request for interpretation, exemption, or classification will still be able to ask that the request and the Department's response be kept confidential for up to 120 days. Because of the proposed change to § 400.2(c)(7)(i) expediting public availability of requests and responses, a change is also necessary in the language of § 400.2(c)(7)(ii), to maintain 120 days as the maximum timeframe for temporary confidential treatment.

In addition, the Department recognizes that there are situations in which a party may submit sensitive commercial or business information, in support of a request for an interpretation, exemption, or classification, that the party would want to keep confidential for a period of time in excess of the 120 days allowed the Department's response and the incoming request. The proposed changes address the concerns that were raised in Executive Order 12600 of June 23, 1987, which instructed Federal Executive agencies to have procedures in place that would notify submitters of potentially sensitive commercial or business information if the information is the subject of a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and to give the submitter of such information a chance to demonstrate why the information should be kept confidential under section (b)(4) of FOIA, 5 U.S.C. 552(b)(4).

The Department revised Part 1 of Title 31 of its regulations, effective August 13, 1987, for the disclosure of records under FOIA and the Privacy Act (52 FR 26302). Those revisions included provisions for predisclosure notification to submitters of business information as described in the Executive Order. See 52 FR 26302, 26311 (revising 31 CFR 1.6). The proposed changes to § 400.2(c)(3)(iv) would clarify the applicability of the Department's regulations, found at 31 CFR 1.6, and would establish a procedure for requesting confidential treatment pursuant to these regulations.

The Department proposes that, if a party submits information in support of a request for interpretation, exemption, or classification that the party wishes to be kept confidential beyond the temporary 120-day period, the party be required to segregate, to the extent possible, such information from the rest of its request and submit a statement asking for confidential treatment and stating the reasons why such treatment should be afforded. In addition, the party requesting confidential treatment would be required to clearly mark and identify all information sought to be kept confidential. Information designated as confidential would not be released with the incoming request and the Department's response. Should a request under FOIA then be received for the segregated information, the Department, as required, would notify the submitter of the information, in accordance with 31 CFR 1.6, that a request for the information has been made and afford the submitting party a chance to state why the information should not be released under exemption (b)(4) of FOIA.

In summary, the proposed changes to § 400.2 would allow protection of sensitive business and commercial information while generally expediting the public availability of the Department's responses to requests for interpretation, exemption, and classification.

B. Part 402—Financial Responsibility

In Part 402, changes are being proposed to § 402.2, which states the capital rule for registered government securities brokers and dealers, and to § 402.2a (Appendix A), which provides a detailed description of the calculation of the market risk haircut required by § 402.2.

Securities of International Organizations

Subsequent to the publication of the final regulations (52 FR 27910, July 24, 1987), the Department became aware of uncertainty regarding the classification, for purposes of the computation of the capital requirements under § 402.2, of certain securities issued by international organizations, such as the International Bank for Reconstruction and Development, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank, which have a statutory exemption from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. (See, e.g., 22 U.S.C. 286k–1(a).) The Department now proposes to clarify classification of such securities as Treasury market risk instruments pursuant to § 402.2(e)(1) by adding a new category to the list of Treasury market risk instruments. Only those securities issued by these international organizations whose changes in yield are closely correlated with changes in yield of comparable Treasury securities, including STRIPS, would be included as Treasury market risk instruments. Any other securities issued by these entities would be included in the Other Securities Haircut, § 402.2a(b). Futures and forwards on those securities of international organizations that are Treasury market risk instruments would also be included as Treasury market risk instruments.

Credit Volatility Haircut

An amendment to § 402.2(g)(1)(iv) is proposed to clarify that futures and forwards on dollar-denominated time deposits that mature in 45 days or more and whose changes in yield are closely correlated with marketable certificates of deposit of no more than one year to maturity are included in the calculation of the credit volatility haircut. The futures and forwards have a price-change risk based on general perceptions of the relative credit quality of time deposits, which price-change risk is not included in the market risk haircut factors. The credit volatility haircut captures the risk of price changes corresponding to perceptions of changes in the instruments' credit status for short term money market instruments. Accordingly, it is consistent with the current rule's application to clarify that the future or forward contract on a time deposit is to be included in the calculation of the credit volatility haircut.

Changes to the Calculations and Instructions

The Department proposes conforming and clarifying revisions to the portions of § 402.2a addressing (1) the calculation of the market risk haircut and (2) the instructions to the schedules that may be used by government securities brokers or dealers in the calculation of the total haircuts as required by Part 402. Additionally, the changes include the correction of certain descriptions in § 402.2a, paragraphs (a)(3)(i)(A), (a)(3)(i)(A)(*1*), (a)(3)(ii)(A), and (a)(3)(ii)(A)(*1*). The changes clarify that futures and forwards that are Treasury market risk instruments should be included in the calculations of the interim haircuts for long and short futures and forward positions.

C. Part 403—Protection of Customer Securities and Balances

In Part 403, changes are being proposed to §§ 403.1 and 403.4(e), which relate to the provisions for hold-in-custody repurchase transactions effected by registered brokers and dealers and registered government securities brokers and dealers; to § 403.5(d) and (f)(3), which contain provisions relating to financial institutions' handling of hold-in-custody repurchase transactions; to § 403.5(e), which addresses the reserve requirements for government securities brokers or dealers that are branches or agencies of a foreign bank; and to § 403.7, which specifies the various effective dates for this Part.

Conforming Changes

The Department's final rules under the Government Securities Act, in § 403.4, require newly registered government securities brokers and dealers to comply with the Commission's customer protection rule (17 CFR § 240.15c3-3, or "Rule 15c3-3"), with certain modifications. Compliance by registered brokers and dealers with various SEC rules, including Rule 15c3–3 as modified, is deemed to constitute compliance with the Treasury rules with respect to the broker or dealer's government securities activities (see § 403.1).

At the time of adoption of the Department's final rules, the amendments to Rule 15c3–3 relating to the requirements applicable to hold-in-custody repurchase transactions had not yet been adopted by the Commission in final form. Thus, the Treasury rules, in § 403.4(e), contained a new section 13–3(b)(4), setting out the requirements applicable to such transactions. The Commission later adopted a virtually identical change to Rule 15c3–3, which was issued as a final rule on August 14, 1987 (52 FR 30331) and became effective on January 31, 1988.

Consequently, the Department is proposing to eliminate the duplicative provisions relating to hold-in-custody repurchase transactions from § 403.4 because they are now incorporated in the Commission's rule that the Department has adopted. The differences between the Treasury rule on hold-in-custody repurchase transactions and the rule adopted by the Commission have been retained in § 403.4(e). These differences are: (1) A slight variation in disclosure language, applicable only to registered government securities brokers and dealers, relating to the coverage of the Securities Investor Protection Act; (2) the Treasury clarification of the acceptable control locations for government securities; and (3) a provision the Commission chose not to adopt permitting the waiver of a confirmation by foreign counterparties under certain circumstances.

Conforming changes relating to the amendment of Rule 15c3–3 are also being made in §§ 403.1 and 403.7.

Applicability to Financial Institutions of § 403.5(d)—Requirements for Hold-in-Custody Repurchase Transactions

Section 403.5(d) contains rules applicable to financial institutions that engage in hold-in-custody repurchase transactions. These rules essentially parallel the requirements of § 403.4 which apply to non-financial institution brokers and dealers. Both rules provide that the repurchase agreement must be obtained in writing; specify certain disclosures that must be included in the agreement; require confirmation of the specific securities that are the subject of a hold-in-custody repurchase transaction by the end of the day on which a transaction is initiated and on any day on which substitution of securities occurs; and specify possession or control requirements.

Section 403.5(d) differs from § 403.4 in one respect. It contains a provision whereby a financial institution is exempt from the provisions of § 403.5(d) if it does not retain the right to substitute securities that are the subject of a repurchase transaction and it delivers the subject securities to the separate control of the safekeeping department. ("Safekeeping" is defined for this purpose in § 403.5(f)(3).)

It was the Department's intention that this provision (the "safekeeping exception") have limited applicability and that the provisions applicable to hold-in custody repurchase transactions engaged in by most financial institutions would be those that parallel the rules applicable to government securities brokers and dealers subject to § 403.4. A primary basis for the safekeeping exception was the idea that the area of the financial institution initiating the repurchase transaction would give up control of the securities by delivering the securities to a custodial area of the financial institution.

Since adoption of the final rule, it has become apparent, through communications with numerous financial institutions, that the safekeeping exception, as currently drafted, has broader potential applicability than the Department intended. For example, it has come to the Department's attention that a number of institutions that actively engage in hold-in-custody repurchase transactions are seeking to use the safekeeping exception as a means of avoiding all or part of the requirements applicable to hold-in-custody repurchase transactions. It is the Department's understanding that these institutions are primarily concerned with the requirement for issuing confirmations under the hold-in-custody rules, particularly as it relates to "sweep" repurchase transactions. In a sweep repurchase transaction, excess funds are swept from a customer's deposit account for overnight investment in a repurchase transaction. Since sweep repurchase transactions are recurring transactions, generally giving rise to a new repurchase transaction daily, the provisions of § 403.5(d) require the issuance of a confirmation each day.

The legislative process giving rise to the Government Securities Act, under which these regulations are issued, focused on hold-in-custody repurchase transactions as an area of major concern in the context of investor protection. The Department believes that the hold-in-custody repurchase transaction requirements—written agreement, required disclosures, prompt confirmation of the subject securities, and possession or control rules—all are fundamental provisions for strengthening investor protection. It should be noted that it was the Department's expectation, even under the safekeeping exception, that securities subject to repurchase transactions be confirmed promptly.

The Department has considered potential refinements to the safekeeping exception to clarify its intended scope but has concluded, after detailed consideration, that it is not possible to create an exception to the basic hold-in-custody transaction rules that would achieve the limited applicability intended and, at the same time, preserve in all cases an acceptable level of customer protection. In the context of repurchase transactions where a financial institution is a party to the transaction and where the movement of the securities in and out of a custodial area may be completely automatic, the Department does not believe that there would realistically be enough relinquishment of control to justify treatment of these transactions as other than hold-in-custody repurchase transactions. For these reasons, the Department is proposing to rescind the safekeeping exception by modifying the introductory language to § 403.5(d)(1) and removing § 403.5(f)(3). It is the Department's intent that this change would become effective one month after publication as a final rule. Public comment is specifically requested on the proposed amendment to § 403.5.

Foreign Branches and Agencies—Reserve Requirements

Section 403.5(e) of the regulations provides that a government securities broker or dealer that is a branch or agency of a foreign bank is subject to a modified version of the reserve requirement applicable to non-bank brokers and dealers. A foreign branch or agency subject to the rule must keep on deposit with a bank (as that term is defined in 12 U.S.C. 1813(h)) an amount computed in accordance with the modified version of the reserve formula. As stated in the preamble to the temporary regulations (52 FR 19648, May 26, 1987), this requirement was meant to provide a degree of assurance to securities customers to whom the foreign branch or agency owes money, by requiring that such funds be available in the United States in the event of a failure.

Inadvertently, the current provision does not include instructions concerning the timing and frequency of the computation of the amount of the deposit and the timing of the deposit. In addition, the current provision does not include a requirement that a record be made of each computation and that such records be preserved. Therefore, the Department proposes to amend § 403.5(e) by adding new paragraphs (e)(5) and (e)(6). Proposed paragraph (e)(5) requires that the computation be made weekly as of the close of the last business day of the week and that the deposit so computed be made no later than one hour after the opening of banking business on the second following business day. Proposed paragraph (e)(6) requires that the foreign branch and agency make and maintain a record of each computation and that these records be preserved for three years, the first two years of which the records must be maintained in an easily accessible place. Both proposed paragraphs are based on comparable provisions relating to the computation of the reserve formula in Rule 15c3–3(e)(3).

Effective Dates—Technical Amendments

Section 403.7 contains effective dates for various provisions of Part 403. In § 403.7 (b), (c), (d) and (e), references to § 403.4(e) have been changed to refer more generally to § 403.4 to conform to the modifications to § 403.4(e) discussed above. Additionally, the introductory language in paragraphs (d)(1) and (d)(2) has been modified to make clear that the interim disclosures addressed in § 403.7(d) were to be used only until such time as the requirement for obtaining a written agreement, with the disclosures required under § 403.4 or § 403.5(d), became effective. With the requirement for a written agreement in effect, hold-in-custody repurchase transactions may not be entered into with a counterparty until such written agreement is obtained from the counterparty.

D. Part 404—Recordkeeping and Record Preservation

In Part 404, changes are being proposed to § 404.4, which contains recordkeeping requirements for government securities brokers and dealers that are financial institutions.

Reference to Part 450; Securities Count

The Department proposes to make two corrections to § 404.4(a). Section 404.4(a)(2) would be corrected to provide that a financial institution government securities broker or dealer must make and keep the records required by § 450.4 (c), (d) and (f) of the regulations. The current provision provides that records required by § 450.4 (c), (d)(3) and (f) be made and kept.

Section 404.4(a)(3) would also be corrected to eliminate the reference to the "physical" count of securities. A government securities broker or dealer that is a financial institution is required by § 403.5(a)(2) of the regulations to comply with Part 450 of the regulations. Section 450.4(d) requires an annual count of government securities held for customers both in definitive and book-entry form. The term physical count is not an accurate description of the securities count required by § 450.4(d) because securities in book-entry form must be included in the count.

E. Part 450—Custodial Holdings of Government Securities by Depository Institutions

In Part 450, a change is being proposed to § 450.1, which addresses the scope of and office responsible for the regulations.

Interpretations of Part 450

A change is being made to § 450.1(b) to clarify that the procedure described for requesting and giving interpretations of the regulations described in § 400.2 is also applicable to interpretations of Part 450.

III. Special Analyses

Based on discussions with government securities brokers and dealers and depository institutions, it is the Department's view that the proposed regulations will not impose any major increase in costs on those affected or significantly affect the economy. In addition, the Department has concluded that the proposed regulations will not have an unnecessary or inappropriate differential impact on classes of entities affected by the regulations such as to create a burden on competition.

The changes described in the section-by-section analysis are clarifications or revisions with limited impact. The proposed revisions to Part 400 modify slightly the procedures for obtaining confidential treatment of sensitive information submitted in connection with requests for interpretation or exemption and do not impose any substantive regulatory requirements. The proposed revisions to Part 402 clarify treatment of certain items included in the required calculation of liquid capital and also do not involve new regulatory requirements. The proposed revision to § 403.4 does not represent a substantive change but merely changes the provision relating to hold-in-custody repurchase transactions to take into account the adoption of an essentially identical provision by the SEC.

With respect to the proposed elimination of the "safekeeping exception" in § 403.5, it was the expectation of the Department that the exception would have limited applicability. As described above, the exception is being withdrawn because the Department has concluded that it is not feasible to provide such an exception without creating the potential for much broader applicability than was anticipated. Potential modifications to the exception have proven to be ineffective in clarifying the intended scope. The proposed revision to § 403.5(e) clarifies that the imposition on branches or agencies of foreign banks of a reserve requirement based on SEC Rule 15c3–3 was intended to incorporate the requirement that the calculation be done weekly. The revision also includes a specific recordkeeping requirement, similar to the requirements of Part 404, that was omitted in the final rule. The proposed revision to Part 450 clarifies that the procedures set out in Part 400 for requests for interpretation also are applicable to interpretations of Part 450.

Based on the foregoing, the Department has concluded that the proposed regulations do not constitute a major rule for the purposes of Executive Order 12291 and that a regulatory impact analysis is not required.

In addition, it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. Although the safekeeping exception was intended, in part, to accommodate financial institutions whose repurchase transaction activity normally would be relatively limited, the Department does not expect that its deletion will have a significant impact on that activity or on the institutions as a whole. As a result, a regulatory flexibility analysis is not required.

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 those 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, DC 20503, and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

List of Subjects

17 CFR Part 400

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 402

Brokers, Government securities.

17 CFR Part 403

Banks, banking, Brokers, Government securities.

17 CFR Part 404

Banks, banking, Brokers, Government Securities, Reporting and recordkeeping requirements.

17 CFR Part 450

Banks, banking, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, it is proposed to amend 17 CFR Parts 400, 402, 403, 404, and 450 as follows:

PART 400—RULES OF GENERAL APPLICATION

1. The authority citation for Part 400 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5).

2. Section 400.2 is amended by revising paragraphs (c)(1) and (c)(3)(iv); by redesignating (c)(3)(v) as (c)(3)(vi) and revising it; by adding a new (o)(3)(v); and by revising paragraph (c)(7) to read as follows:

§ 400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.

* * * * *

(c) * * *

(1) Interpretations under this chapter may be provided, at the discretion of the Department, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

* * * * *

(3) * * *

(iv) In addition to requests for confidential treatment under paragraph (c)(7)(ii) of this section, a person may request confidential treatment of information that is submitted as part of, or in support of, a request for interpretation, exemption, or classification. A separate request for confidential treatment and the basis for such request shall be submitted at the time the information for which confidential treatment is requested is submitted. The request for confidential treatment must specifically identify the information for which such confidential treatment is requested. To the extent practicable, the information should be segregated from information for which confidential treatment is not requested and should be clearly marked as confidential.

(v) Information designated as confidential in accordance with paragraph (c)(3)(iv) of this section shall not be disclosed to a person requesting such information other than in accordance with the procedures outlined in the Department's regulations published at 31 CFR 1.6.

(vi) An original and two copies of each request letter shall be submitted to the Office of the Commissioner, Bureau of the Public Debt, Room 553, 999 E Street NW., Washington, DC 20239-0001. The envelope shall be marked "Government Securities Act Request." The letter shall indicate in the upper right hand corner of the first page the particular sections of the Act and of the regulations at issue.

* * * * *

(7)(i) Except as provided in paragraphs (c)(3)(iv) and (c)(7)(ii) of this section, every letter or other written communication requesting the Department to provide interpretive legal advice under the Act or to grant, deny or modify an exemption, classification or modification of the regulations, together with any written response thereto, shall be made available for inspection and copying as soon as practicable after the response has been sent or given to the person requesting it. These documents will be made available at the following location: Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(ii) Any person submitting a letter or communication may also simultaneously submit a request that the letter or communication and the Department's response be accorded confidential treatment for a specified period of time not to exceed 120 days from the date the response has been made or given to such person. The request shall state the basis upon which the request for confidential treatment has been made. If the Department determines that the request for confidential treatment should be denied, the requester will be given 30 days to withdraw either the request for confidential treatment or the letter or communication requesting an interpretation, classification, or exemption.

* * * * *

PART 402—FINANCIAL RESPONSIBILITY

3. The authority citation for Part 402 continues to read as follows:

Authority: Section 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(A), (b)(2)).

4. Section 402.2 is amended by redesignating and revising paragraphs (e)(1) (vi), (vii), and (viii) as (e)(1) (vii), (viii), and (ix); by adding a new paragraph (e)(1)(vi); and by revising paragraph (g)(1)(iv) to read as follows:

§ 402.2 Capital requirements for registered government securities brokers and dealers.

* * * * *

(e) * * *

(1) * * *

(vi) Securities, other than equity securities, issued by international organizations that have a statutory exemption from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934 provided their changes in yield are closely correlated to the changes in yield of similar Treasury securities, including STRIPS;

(vii) Futures, forwards, and listed options on Treasury market risk instruments described in paragraphs (e)(1) (i)-(vi) 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;

(viii) Options on those futures contracts described in paragraph (e)(1)(vii) of this section, settled on a cash or delivery basis; and

(ix) Unlisted options on marketable Treasury bills, notes or bonds.

* * * * *

(g) * * *

(1) * * *

(iv) *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 44 days, including futures and forwards thereon, settled on a cash or delivery basis, and futures and forwards on time deposits described in paragraph (e)(1)(vii) of this section, that have a term to maturity greater than 44 days, settled on a cash or delivery basis.

5. Section 402.2a is amended by revising paragraphs (a)(1)(iii)(B), (a)(1)(iii)(C), (a)(1)(iv)(B) and

(a)(1)(iv)(C); by adding paragraphs (a)(1)(iii)(D) and (a)(1)(iv)(D); by revising paragraphs (a)(3)(i)(A) introductory text, (a)(3)(i)(A)(*1*), (a)(3)(ii)(A) introductory text, and (a)(3)(ii)(A)(*1*); by revising in paragraph (c) *Instructions to Schedules A through E, Schedule A—Liquid Capital Requirement Summary Computation,* Line 3 c.; *Schedule B—Calculation of Net Immediate Position in Securities and Financings,* in Columns 3 and 4 revising paragraphs (4), (5) and the first paragraph of concluding text, and adding paragraph (6); and *Schedule D—Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts,* revising the second and third paragraphs, to read as follows:

§ 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(B) The net long when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net long when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net long when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

(iv) * * *

(B) The net short when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net short when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net short when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

* * * * *

(3) * * *

(i) * * *

(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 which is a Treasury market risk instrument except those on 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 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 which is a Treasury market risk instrument except those on 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.

* * * * *

(ii) * * *

(A) *Gross short futures and forward interim haircut.* The "gross short futures and forward interim haircut" 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 which is a Treasury market risk instrument except those on 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 which is a Treasury market risk instrument except those on 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.

* * * * *

(c) * * *

Instructions to Schedules A through E * * *

Schedule A * * *

Line 3 * * *

c. Enter the credit volatility haircut which equals a factor of 0.15 percent applied to the larger of the gross long or gross short position in money market instruments qualifying as Treasury market risk instruments which mature in 45 days or more, in futures and forwards on these instruments that are settled on a cash or delivery basis, and in futures and forwards on time deposits described in § 402.2(e)(1)(vii), that mature in 45 days or more, settled on a cash or delivery basis. Money market instruments qualifying as Treasury market risk instruments are (1) marketable certificates of deposit with no more than one year to maturity, (2) bankers acceptances, and (3) commercial paper which has no more than one year to maturity and is rated in one of the three highest categories by at least two nationally recognized statistical rating organizations.

* * * * *

Schedule B * * *

Columns 3 and 4 * * *

(4) Bankers acceptances;

(5) Commercial paper of no more than one year to maturity rated in one of the three highest categories by at least two nationally recognized statistical rating organizations; and

(6) Securities described in § 402.2(e)(1)(vi).

Report all positions as of the trade date. If the settlement date is scheduled for more than five business days in the future (or, in the case of a mortgage-backed security, more than thirty calendar days in the future), then report the position as a forward contract on Schedule D. Also, under "Securities Positions" in the appropriate column and category, report any when-issued position in a marketable Treasury security between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

* * * * *

Schedule D * * *

Report on Schedule D futures, forwards, and options which are Treasury market risk instruments as defined in § 402.2(e). These futures, forwards, and listed option contracts may be based on any of the Treasury market risk instruments described in the instructions to columns 3 and 4 on Schedule B or on time deposits whose changes in yield are closely correlated with marketable certificates of deposit which are Treasury market risk instruments, as described in § 402.2(e)(1)(vii). Options on Treasury market risk futures contracts and unlisted options on marketable Treasury bills, notes, and bonds are also to be included. Futures contracts may settle on a cash or delivery basis. Any of these contracts which are being included as part of a hedge in the calculation of the other securities haircut must be excluded from Schedule D.

Report as a forward contract any position for which the time between trade date and settlement date is more than five business days (30 calendar days for a mortgage-backed security). Any when-issued position in a marketable Treasury security established between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security established between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date is reported in the appropriate category on Schedule B under "Securities Positions."

* * * * *

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

6. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(A), (b)(2)).

7. Section 403.1 is revised to read as follows:

§ 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c-1 of this title (SEC Rule 8c-1), as modified by § 403.2 (a), (b) and (c), with § 240.15c2-1 of this title (SEC Rule 15c2-1), with § 240.15c3-2 of this title (SEC Rule 15c3-2), as modified by § 403.3, and with § 240.15c3-3 of this title (SEC Rule 15c3-3), as modified by § 403.4 (a)-(d), (e)(2)-(3), and (f)-(i), constitutes compliance with this part.

8. Section 403.4 is amended by revising paragraph (e) to read as follows:

§ 403.4 Customer protection—reserves and custody of securities.

* * * * *

(e)(1) For purposes of this section, § 240.15c3-3(b)(4)(i)(C) is modified to read as follows: "(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 will not provide protection to the counterparty with respect to the repurchase agreement."

(2) For purposes of this section, § 240.15c3-3(b)(4)(ii) is modified to read as follows: "(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)(3), (c)(5), (c)(6), or § 403.4(f) of this title."

(3) For purposes of this section, § 240.15c3-3(b)(4)(iv) is redesignated § 240.15c3-3(b)(4)(iv)(A) and paragraph (b)(4)(iv)(B) is added to read as follows: "(B) A person that is a non-U.S. citizen residing outside of the United States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (b)(4)(i)(B) of this section."

* * * * *

9. Section 403.5 is amended by revising the introductory text of paragraph (d)(1); by adding paragraphs (e)(5) and (e)(6) and by removing paragraph (f)(3) to read as follows:

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

* * * * *

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty shall:

* * * * *

(e) * * *

(5) 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 one hour after the opening of banking business on the second following business day.

(6) A government securities broker or dealer that is a branch or agency of a foreign bank shall make and maintain a record of each computation made pursuant to paragraph (e)(5) of this section and preserve each such record for a period of not less than three years, the first two years in an easily accessible place.

* * * * *

10. Section 403.7 is amended by revising paragraph (b), the first sentence of paragraph (c), the introductory text of paragraphs (d) (1) and (2), (d) (1)(i) and (2)(i), and the introductory text of (d) (1)(ii) and (2)(ii), and paragraph (e) to read as follows:

§ 403.7 Effective dates.

* * * * *

(b) *Confirmations.* The requirement of §§ 403.4 and 403.5(d) to describe the specific securities that are the subject of a repurchase transaction, including the market value of such securities, on a confirmation at the initiation of a repurchase transaction or on substitution of other securities shall be effective January 31, 1988.

(c) *Written repurchase agreements.* The requirement to obtain a repurchase agreement in writing with the provisions described in §§ 403.4 and 403.5(d) shall be effective October 31, 1987, in the case of new customers of a government securities broker or dealer and shall be effective January 31, 1988, in the case of existing customers of a government securities broker or dealer. * * *

(d) *Disclosures.* (1) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a government securities broker or dealer that is subject to § 403.4 shall furnish the counterparty with a separate interim disclosure document containing:

(i) The disclosure referred to in § 403.4 concerning the Securities Investor Protection Act of 1970, and

(ii) If applicable, the following disclosure: * * *

(2) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a financial institution that is subject to § 403.5(d) shall furnish the counterparty with a separate interim disclosure document containing:

(i) The disclosure referred to in § 403.5(d) concerning the inapplicability of deposit insurance, and

(ii) If applicable, the following disclosure: * * *

* * * * *

(e) *Existing term repurchase transactions.* Notwithstanding paragraphs (b), (c) and (d) of this section, the requirements of §§ 403.4 and 403.5(d) (with respect to hold-in-custody repurchase transactions), with the exception of the requirements to confirm the substitution of securities subject to a repurchase transaction, shall not be applicable to any repurchase transaction initiated on or before August 31, 1987, that, by its terms, matures on a specific date after August 31, 1987.

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

11. The authority citation for Part 404 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(B), (b)(1)(C), (b)(2)).

12. Section 404.4 is amended by revising paragraphs (a)(2) and (a)(3)(i)(A) to read as follows:

§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

(a) * * *

(2) Complies with the recordkeeping requirements of §§ 450.4 (c), (d) and (f) of this chapter; and

(3) * * *

(i)(A) A securities record or ledger reflecting separately for each government security as of the settlement dates all "long" or "short" positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its own account or for the account of its customers or others (except securities held in a fiduciary capacity) 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 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;

* * * * *

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

13. The authority citation for Part 450 continues to read as follows:

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. 3222-23 (31 U.S.C. 3121, 9110).

14. Section 450.1 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

§ 450.1 Scope of regulations; office responsible.

* * * * *

(b) * * * Procedures for obtaining interpretations of the regulations are set forth at § 400.2.

Charles O. Sethness,

Assistant Secretary for Domestic Finance.

[FR Doc. 88-5550 Filed 3-14-88; 8:45 am]

BILLING CODE 4810-10-M

federal register

Tuesday
March 15, 1988

Part V

Department of Education

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program. These proposed regulations will clarify that the purpose of these programs includes addressing the problems of illiteracy among persons with handicaps. It further provides that public libraries may be used for the distribution of captioned films and educational media.

DATE: Comments must be received on or before May 16, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Joseph Clair, Office of Special Education Programs, 400 Maryland Avenue, SW. (Room 4092—Switzer), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4905–M/S 2312), Washington, DC 20202. Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: The Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program are authorized by Part F of the Education of the Handicapped Act (20 U.S.C. 1451, 1452 and 1454). Section 652 was amended by section 315 of the Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457). The amendments to section 652(a) of the Act provide that the purpose of the two programs includes addressing problems of illiteracy among deaf individuals and individual with other handicaps. The amendments also provide that public libraries may be used for the distribution of captioned films and educational media.

In addition, the regulations for these two programs have been reviewed for the purpose of deregulation. This review has resulted in the proposed removal of the provisions on how to obtain applications for borrowing captioned films and educational media because these provisions are informational, not regulatory. The cross-references to EDGAR in the definitions and applicable regulations would be removed because they are not applicable to either of these programs. The regulations also would be simplified to provide that the sum of any fees collected by borrowers of captioned film and media shall not exceed reasonable overhead expenses.

Executive Order 12291

These amendments to the regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only individuals, the regulations would not have an impact on small entities. Individuals are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4605, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 330 and 331

Education, Education of handicapped, Motion pictures.

(Catalog of Federal Domestic Assistance No. 84.026; Handicapped Media Services and Captioned Films)

Dated: February 29, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Parts 330 and 331 of Title 34 of the Code of Federal Regulations as follows:

PART 330—CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM

1. The authority citation for Part 330 is revised to read as follows:

Authority: 20 U.S.C. 1451, 1452, unless otherwise noted.

2. In § 330.1, paragraph (b) is amended by removing the word "and" following the semicolon at the end of the paragraph, paragraph (c) is amended by removing the period at the end of the paragraph and adding, in its place, the word "; and", and a new paragraph (d) and authority citation are added to read as follows:

§ 330.1 Captioned Films Loan Service for the Deaf Program.

* * * * *

(d) Addressing the problems of illiteracy among the handicapped.

(Authority: 20 U.S.C. 1451, 1452)

3. Section 330.3 is revised to read as follows:

§ 330.3 What regulations apply to the Captioned Films Loan Service for the Deaf Program?

The regulations in this Part 330 apply to the Captioned Films Loan Service for the Deaf Program.

(Authority: 20 U.S.C. 1451, 1452)

§ 330.4 [Amended]

4. Section 330.4 is amended by removing paragraph (a) and by removing the words "(b) *Specific program*

definitions:" and adding, in their place, the words "The following definitions apply to terms used in this part:".

§ 330.30 [Removed and Reserved]

5. Section 330.30 is removed and reserved.

6. Section 330.50 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 330.50 What are the limitations on the use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for use of the films shall not exceed the reasonable expense incurred by the borrower in showing the films to eligible viewers.

* * * * *

PART 331—EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

7. The authority citation for Part 331 is revised to read as follows:

Authority: 20 U.S.C. 1452, unless otherwise noted.

§ 331.1 [Amended]

8. Section 331.1 is amended by removing the period at the end of the sentence and adding, in its place, the words ", including for the purpose of addressing illiteracy among the handicapped."

9. Section 331.3 is revised to read as follows:

§ 331.3 What regulations apply to the Educational Media Loan Service for the Handicapped Program?

The regulations in this Part 331 apply to the Educational Media Loan Service for the Handicapped Program.

§ 331.4 [Amended]

10. Section 331.4 is amended by removing paragraph (a) and by removing the words "(b) *Specific program definitions:*" and adding, in their place, the words "The following definitions apply to the terms used in this part:".

§ 331.30 [Removed and reserved]

11. Section 331.30 is removed and reserved.

12. Section 331.50 is revised to read as follows:

§ 331.50 What are the limitations on the use of the loan service?

A borrower shall use the educational media for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for the use of the educational media shall not exceed the reasonable expenses incurred by the borrower in exhibiting the media to eligible parties.

(Authority: 20 U.S.C. 1452(a))

[FR Doc. 88-5590 Filed 3-14-88; 8:45 am]
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FEDERAL REGISTER PAGES AND DATES, MARCH

CFR PARTS AFFECTED DURING MARCH

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.

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.**

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